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Briefing on How To Use the Federal Register
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WHO: The Office of the Federal Register.

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WASHINGTON, DC

WHEN: April 20 at 9:00 am

WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Delegations of Authority by the Secretary of Agriculture and General Officers of the Department

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document amends the delegations of authority from the Secretary of Agriculture (the Secretary) and the General Officers of the Department to the Under Secretary for International Affairs and Commodity Programs and from the Under Secretary for International Affairs and Commodity Programs to the Administrator of the Agricultural Stabilization and Conservation Service (ASCS) concerning the commodity, conservation, disaster assistance, and other programs of ASCS under the Agricultural Adjustment Act of 1938, as amended, the Agricultural Act of 1949, as amended, the Food Security Act of 1985, as amended and other authorities in order to update and revise the regulations to reflect current legislation and remove obsolete references.

EFFECTIVE DATE: March 25, 1994.

FOR FURTHER INFORMATION CONTACT: Larry A. Walker, Acting Deputy Administrator, Policy Analysis, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, 14th and Independent Avenue SW., Washington, DC 20250–0500; telephone (202) 720–3451.

SUPPLEMENTARY INFORMATION: Sections 101B, 103B, 105B, 107B, and 208 of the Agricultural Act of 1949, as added by sections 601, 501, 401, 301, and 1126, respectively, of the Food, Agriculture, Conservation, and Trade Act of 1990 (FACT Act), provide for disaster assistance payments to producers of rice, cotton, feed grains, wheat, peanuts, soybeans, sugar beets, and sugarcane for losses due to drought, flood, or other natural disaster, as determined by the Secretary.

Title VI of the Agricultural Act of 1949 (the Emergency Livestock Feed Assistance Act of 1988), as added by section 101(a) of the Disaster Assistance Act of 1988, provides for emergency livestock feed assistance to livestock producers where, because of disease, insect infestation, flood, drought, fire, hurricane, earthquake, storm, hot weather, or other natural disaster, the Secretary determines that a livestock emergency exists.

Section 205 of the Agricultural Act of 1949, as added by section 701(2) of the FACT Act, requires the Secretary to support the prices of oilseeds through loans and payments.

Sections 359aa–jj of the Agricultural Adjustment Act of 1938, as added by section 902 of the FACT Act, require the Secretary to operate a sugar production adjustment program, including, under certain conditions, the implementation of marketing allotments for sugar and crystalline fructose.

The Beef Research and Information Act, as amended, and Title XIX of the FACT Act, as amended (the Agricultural Promotion and Research Act of 1990), require the Secretary to conduct producer referenda regarding the operations of agricultural promotion plans using ASCS county offices.

Sections 1230–56 of the Food Security Act of 1985, as added or amended by sections 1431–46 of the FACT Act, require the Secretary to implement a Conservation Reserve Program, Wetlands Reserve Program, Agricultural Water Quality Incentives Program, Environmental Easement Program, and other conservation programs.

Section 1451 of the FACT Act, as amended, requires the Secretary to establish a voluntary Integrated Farm Management Program designed to assist producers of agricultural commodities in adopting integrated, multiyear, site-specific farm management plans by reducing farm program barriers to resource stewardship practices and systems.

Section 326 of the Food and Agriculture Act of 1962, as amended, provides for Secretarial discretion in the acceptance of a "good faith" performance, made in reliance on an action or advice of an authorized representative of the Secretary, as the basis for meeting the requirements of ASCS-administered programs.

Sections 1151–56 of the FACT Act, as amended, require the Secretary to conduct an Options Pilot Program to determine whether regulated agricultural commodity options trading can be used by producers to obtain protection from fluctuations in the market prices of the commodities they produce and the impact of such trading on the prices of the commodities.

Section 1764 of the Food Security Act of 1985 requires the Secretary to formulate and administer regulations regarding program ineligibility resulting from convictions for certain controlled substance violations.

The delegations of authority of the Department of Agriculture are amended to delegate to the Under Secretary for International Affairs and Commodity Programs the Secretary's authorities described above and to further delegate these authorities to the Administrator, ASCS, and to make related conforming amendments and deletions of obsolete references.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for public comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Orders 12778 and 12866.

This action is not a rule as defined by Public Law 96–354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, part 2, title 7, Code of Federal Regulations is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for 7 CFR part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.21 is amended by revising paragraphs (b)(1), (b)(6), (b)(8), (b)(10), (b)(11), (b)(13), (b)(14), (b)(15), (b)(19), (b)(20), (b)(21), (b)(24), (b)(31), (b)(36), and (b)(39), and by adding new paragraphs (b)(40), (b)(41), (b)(42), and (b)(43) to read as follows:

§ 2.21 Under Secretary for International Affairs and Commodity Programs.

* * * * *

(b) * * *

(1) Administer the tobacco acreage allotment and farm marketing quota programs under the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1311, et seq.).

* * * * *

(6) Administer the forestry incentives program under section 4 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103).

* * * * *

(8) Administer the emergency conservation program under the Agricultural Credit Act of 1978, as amended (16 U.S.C. 2201, et seq.).

* * * * *

(10) Administer the feed grain program under the Agricultural Act of 1949, as amended (7 U.S.C. 1444f, et seq.).

(11) Administer the wheat program under the Agricultural Act of 1949, as amended (7 U.S.C. 1445b-3a, et seq.).

* * * * *

(13) Administer the upland and extra long staple cotton programs under the Agricultural Act of 1949, as amended (7 U.S.C. 1444, 1444–2, et seq.).

(14) Administer the rice program under the Agricultural Act of 1949, as amended (7 U.S.C. 1441–2, et seq.).

(15) Administer the milk price support program, the milk price reduction program, the milk production termination program, and the milk diversion program under the Agricultural Act of 1949, as amended (7 U.S.C. 1446e, et seq.), and enforce the milk manufacturing allowance requirements of section 102 of the Agricultural Act of 1949, as amended (7 U.S.C. 1446e-1, et seq.).

* * * * *

(19) Administer emergency crop loss assistance programs in accordance with the Agricultural Act of 1949, as amended (7 U.S.C. 1421 note, 1427, et seq., 1441–2, 1444–2, 1444f, 1445b-3a, and 1446i), the Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714b and 714c), the Disaster Relief and Emergency Assistance Act of 1974, as amended (42 U.S.C. 5121, et seq.), and appropriations Acts that provide for the implementation of such programs by the Commodity Credit Corporation.

(20) Administer the emergency livestock assistance programs under the Agricultural Act of 1949, as amended (7 U.S.C. 1427, et seq., 1471 et seq.), the Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714b and 714c), and the Disaster Relief and Emergency Assistance Act of 1974, as amended (42 U.S.C. 5121, et seq.).

(21) Administer the oilseeds price support program under the Agricultural Act of 1949, as amended (7 U.S.C. 1446f, et seq.).

* * * * *

(24) Administer the sugar production adjustment program under the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1359aa-jj), and the sugar price support program under the Agricultural Act of 1949, as amended (7 U.S.C. 1446g, et seq.).

* * * * *

(31) Conduct producer referenda of commodity promotion programs under the Beef Research and Information Act, as amended (7 U.S.C. 2901, et seq.), and the Agricultural Promotion Programs Act of 1990, as amended (7 U.S.C. 6001, et seq.).

* * * * *

(36) Conduct the honey price support program under the Agricultural Act of 1949, as amended (7 U.S.C. 1446h, et seq.).

* * * * *

(39) Formulate and carry out an agricultural resources conservation program, including a Conservation Reserve Program, Wetlands Reserve Program, Agricultural Water Quality Incentives Program, Environmental Easement Program, and other conservation programs under the Food Security Act of 1985, as amended (16 U.S.C. 1231 et seq.).

(40) Administer the Integrated Farm Management Program under the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 5822).

(41) Administer the provisions of section 326 of the Food and Agricultural Act of 1962, as amended (7 U.S.C. 1339c), as they relate to any Agricultural Stabilization and Conservation Service-administered program.

(42) Conduct an Options Pilot Program pursuant to sections 1151–1156 of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 1421 note).

(43) Formulate and administer regulations regarding program ineligibility resulting from convictions under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance, as required under section 1764 of the Food Security Act of 1985 (21 U.S.C. 881a).

* * * * *

Subpart H—Delegations of Authority by the Under Secretary for International Affairs and Commodity Programs

3. Section 2.65 is amended by revising paragraphs (a)(1), (a)(6), (a)(9), (a)(11), (a)(12), (a)(14), (a)(15), (a)(16), (a)(20), (a)(21), (a)(22), (a)(25), (a)(32), (a)(37), and (a)(40), redesignating the second paragraph (a)(42) as paragraph (a)(43), and by adding new paragraphs (a)(44), (a)(45), (a)(46), and (a)(47) to read as follows:

§ 2.65 Administrator, Agricultural Stabilization and Conservation Service.

(a) * * *

(1) Administer the tobacco acreage allotment and farm marketing quota programs under the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1311, et seq.).

* * * * *

(6) Administer the forestry incentives program under section 4 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103).

* * * * *

(9) Administer the emergency conservation program under the Agricultural Credit Act of 1978, as amended (16 U.S.C. 2201, et seq.).

* * * * *

(11) Administer the feed grain program under the Agricultural Act of 1949, as amended (7 U.S.C. 1444f, et seq.).

(12) Administer the wheat program under the Agricultural Act of 1949, as amended (7 U.S.C. 1445b–3a, et seq.).

* * * * *

(14) Administer the upland and extra long staple cotton programs under the Agricultural Act of 1949, as amended (7 U.S.C. 1444, 1444–2, et seq.).

(15) Administer the rice program under the Agricultural Act of 1949, as amended (7 U.S.C. 1441–2, et seq.).

(16) Administer the milk price support program, the milk price reduction program, the milk production termination program, and the milk diversion program under the Agricultural Act of 1949, as amended (7 U.S.C. 1446e, et seq.), and enforce the

milk manufacturing allowance requirements of section 102 of the Agricultural Act of 1949, as amended (7 U.S.C. 1446e–1, et seq.).

* * * * *

(20) Administer emergency crop loss assistance programs in accordance with the Agricultural Act of 1949, as amended (7 U.S.C. 1421 note, 1427, et seq., 1441–2, 1444–2, 1444f, 1445b–3a and 1446i), the Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714b and c), and the Disaster Relief and Emergency Assistance Act of 1974, as amended (42 U.S.C. 5121, et seq.).

(21) Administer the emergency livestock assistance programs under the Agricultural Act of 1949, as amended (7 U.S.C. 1427, et seq., 1471 et seq.), the Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714b and 714c), the Disaster Relief and Emergency Assistance Act of 1974, as amended (42 U.S.C. 5121, et seq.), and appropriation Acts that provide for the implementation of such programs by the Commodity Credit Corporation.

(22) Administer the oilseeds price support program under the Agricultural Act of 1949, as amended (7 U.S.C. 1446f, et seq.).

* * * * *

(25) Administer the sugar production adjustment program under the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1359aa–jj), and the sugar price support program under the Agricultural Act of 1949 (7 U.S.C. 1446g, et seq.), as amended.

* * * * *

(32) Conduct producer referenda of commodity promotion programs under the Beef Research and Information Act, as amended (7 U.S.C. 2901, et seq.) and the Agricultural Promotion Programs Act of 1990, as amended (7 U.S.C. 6001, et seq.).

* * * * *

(37) Conduct the honey price support program under the Agricultural Act of 1949, as amended (7 U.S.C. 1446h, et seq.).

* * * * *

(40) Formulate and carry out an agricultural resources conservation program, including a Conservation Reserve Program, Wetlands Reserve Program, Agricultural Water Quality Incentives Program, Environmental Easement Program, and other conservation programs under the Food Security Act of 1985, as amended (16 U.S.C. 1231, et seq.).

* * * * *

(44) Administer the Integrated Farm Management Program under section 1451 of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 5822).

(45) Administer the provisions of section 326 of the Food and Agricultural Act of 1962, as amended (7 U.S.C. 1339c), as they relate to any agricultural Stabilization and Conservation Service-administered program.

(46) Conduct an Options Pilot Program pursuant to sections 1151–1156 of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 1421 note).

(47) Formulate and administer regulations regarding program ineligibility resulting from convictions under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance, as required under section 1764 of the Food Security Act of 1985 (21 U.S.C. 881a).

For subpart C:

Dated: March 7, 1994.

Mike Espy,

Secretary of Agriculture.

For subpart H:

Dated: March 7, 1994.

Eugene Moos,

Under Secretary for International Affairs and Commodity Programs.

[FR Doc. 94–5909 Filed 3–24–94; 8:45 am]

BILLING CODE 3410–05–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20, 21, 30, 35, 40, 50, 70, 72, and 73

RIN 3150–AE84

NRC Operations Center Commercial Telephone Number Change

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to reflect a change in the NRC Operations Center commercial telephone and facsimile number. These amendments are necessary to inform the public of these administrative changes to the NRC's regulations.

EFFECTIVE DATE: May 31, 1994, 12 noon EDT.

FOR FURTHER INFORMATION CONTACT: Jean Trefethen, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington DC 20555, Telephone (301) 492–8985.

SUPPLEMENTARY INFORMATION: In June 1994, the NRC is scheduled to move its Operations Center from the Maryland National Bank Building in Bethesda, Maryland, to the Two White Flint North Building in Rockville, Maryland. When this move occurs, it will be necessary to use new telephone and facsimile numbers to reach the NRC Operations Center. For a minimum of 90 days following the move, calls made to the old telephone number will automatically transfer to the new Operations Center. NRC licensees shall revise their procedures and any other affected documentation to show the proper telephone and facsimile numbers for the NRC Operations Center. This notice is being published to inform the public and NRC licensees of the commercial telephone and facsimile number changes.

Because this amendment deals with agency procedures, the notice and comment provisions of the Administrative Procedures Act (APA) do not apply pursuant to 5 U.S.C. 553(b)(A). The amendment is effective 12 noon EDT May 31, 1994.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Regulatory Analysis

A regulatory impact analysis has not been prepared for this amendment because it is an administrative action that merely changes the telephone and facsimile numbers that are currently being used by licensees under the existing regulations.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule because this rule does not involve any provisions which would impose a backfit as defined in § 50.109(a)(1). Therefore, a backfit analysis is not required for this rule.

List of Subjects

10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and

reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 21

Nuclear power plants and reactors, Penalties, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 35

Byproduct material, Criminal penalties, Drugs, Health facilities, Health professions, Medical devices, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

10 CFR Part 73

Criminal penalties, Hazardous materials transportation, Export, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 20, 21, 30, 35, 40, 50, 70, 72, and 73.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

1. The authority citation for Part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

2. Section 20.2202(d)(2) is revised to read as follows:

§ 20.2202 Notification of incidents.

* * * * *

(d) * * *

(2) All other licensees shall make the reports required by paragraph (a) and (b) of this section by telephone to the NRC Operations Center (301) 816–5100 and by telegram, mailgram, or facsimile to the Administrator of the appropriate NRC Regional Office listed in appendix D to 10 CFR part 20.

* * * * *

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

3. The authority citation for part 21 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2201, 2282); secs. 201, as amended, 206, 88 Stat. 1242, as amended, 1246 (42 U.S.C. 5841, 5846).

Section 21.2 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

§ 21.2 [Amended]

4. In § 21.2(d), the commercial telephone number of the NRC Operations Center is revised from "(301) 951–0550" to "(301) 816–5100."

§ 21.21 [Amended]

5. In § 21.21(c)(3)(i), the NRC Operations Center commercial facsimile number is revised from "(301) 492–8187" to "(301) 816–5151" and the telephone number from "(301) 951–0550" to "(301) 816–5100."

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

6. The authority citation for part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

§ 30.50 [Amended]

7. In footnote 1 to § 30.50(c)(1), the commercial telephone number of the NRC Operations Center is revised from "(301) 951–0550" to "(301) 816–5100."

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

8. The authority citation for part 35 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 35.33 [Amended]

9. In footnote 2 to § 35.33(a)(1), the commercial telephone number of the NRC Operations Center is revised from "(301) 951–0550" to "(301) 816–5100."

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

10. The authority citation for part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

§ 40.60 [Amended]

11. In footnote 1 to § 40.60(c)(1), the commercial telephone number of the

NRC Operations Center is revised from "(301) 951–0550" to "(301) 816–5100."

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

12. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.120 is also issued under section 306 of the NWPA of 1982, 42 U.S.C. 10226. Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C 2237).

§ 50.55 [Amended]

13. In § 50.55(e)(6)(i), the NRC Operations Center commercial facsimile number is revised from "(301) 492–8187" to "(301) 816–5151" and the telephone number from "(301) 951–0550" to "(301) 816–5100."

§ 50.72 [Amended]

14. In footnote 3 to § 50.72(a)(2), the commercial telephone number of the NRC Operations Center is revised from "(301) 951–0550" to "(301) 816–5100."

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

15. The authority citation for part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

§ 70.50 [Amended]

16. In footnote 1 to § 70.50(c)(1), the commercial telephone number of the NRC Operations Center is revised from "(301) 951–0550" to "(301) 816–5100."

§ 70.52 [Amended]

17. In footnote 1 to § 70.52(a), the commercial telephone number of the NRC Operations Center is revised from "(301) 951–0550" to "(301) 816–5100."

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

18. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148 (c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168 (c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

§ 72.74 [Amended]

19. In footnote 1 to § 72.74(a), the commercial telephone number of the NRC Operations Center is revised from "(301) 951–0550" to "(301) 816–5100."

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

20. The authority citation for part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245 (42 U.S.C. 5841, 5844).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C., 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

§ 73.67 [Amended]

21. In footnote 1 to § 73.67 (e)(3)(vii) and (g)(3)(iii), the commercial telephone number of the NRC Operations Center is revised from "(301) 951–0550" to "(301) 816–5100."

§ 73.71 [Amended]

22. In footnote 1 to § 73.71(a)(1), the commercial telephone number of the NRC Operations Center is revised from "(301) 951–0550" to "(301) 816–5100."

Dated at Rockville, MD, this day of 1994.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 94–7061 Filed 3–24–94; 8:45 am]

BILLING CODE 7590–01–P

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10 CFR Part 50

RIN: 3150–AD40

Emergency Planning and Preparedness Exercise Requirements for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its emergency planning regulations in order to update the Commission's emergency planning exercise requirements for nuclear power plants and clarify ambiguities that have surfaced in the implementation of the regulations. These amendments also make the NRC regulations consistent with FEMA regulations.

EFFECTIVE DATE: June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Michael T. Jamgochian, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301–492–3918).

SUPPLEMENTARY INFORMATION:

Background

On August 19, 1980 (45 FR 55402), the NRC published a final rule that revised its emergency planning regulations. The final rule became effective on November 3, 1980. On July 6, 1984 (49 FR 27733), the NRC amended its emergency planning regulations to relax the frequency of participation by State and local governmental authorities in emergency preparedness exercises at nuclear power reactor sites. The amendments were based on the NRC's experience gained in observing and evaluating emergency preparedness exercises since 1980.

Further experience has shown that the language setting forth the requirements in 10 CFR part 50, Appendix E, Section IV.F.3 concerning full or partial participation by State or local governments in the biennial (offsite) exercise is unnecessarily complicated. The NRC published a notice of proposed rulemaking in the **Federal Register** on June 28, 1993 (58 FR 34539). Public comments were requested by September 13, 1993. The proposed rule did not seek to change the requirements set forth in Appendix E, Section IV.F.3 (a), (b), and (d) but to clarify and simplify the text of the regulation. Offsite authority responsibilities remain unchanged.

Under the proposed rule the offsite plans for each site were to be exercised biennially with full participation by each offsite authority having a role under the plan. Further, where the offsite authority has a role under the plan for more than one site, it would be required to participate in one exercise fully every two years and partially participate in other offsite plan exercises in this period. The only amended requirements were those set forth in Appendix E, Section IV.F.3(e) where the interval for an ingestion exposure pathway exercise was changed from 5 to 6 years, and Appendix E, Section IV.F.3(c) where the requirement that all States within the plume exposure pathway emergency planning zone (EPZ) for a given site fully participate in an offsite exercise for that site at least once every 7 years was deleted.

Public Comments

A total of 12 comment letters were received, of which 5 were from utilities, 6 were from State emergency management agencies and one from NUMARC. All commenters generally agreed with the proposed rulemaking except for one State agency.

Comment: The one commentor that opposed the rule change noted that,

> We do not believe, however, the NRC has substantiated its claim that the seven-year return requirement is unnecessary. Similar arguments have surfaced in previous emergency planning issues, and our response is the same: The high level of industry sensitivity to emergency preparedness is a direct result of comprehensive requirements for emergency preparedness programs and exercises. Elimination of those requirements runs the risk of returning the industry to pre-TMI levels of preparedness.

Response: The Commission does not agree that deleting the 7 year return frequency "* * * runs the risk of returning the industry to pre-TMI levels of preparedness." The Commission is confident that this will not occur because the Commission has found that multi-sites states, when not fully participating in an exercise at a specific site will usually partially participate at a significant level of activity every 2 years at that specific site in order to support the participation of the appropriate local governments. The Commission has found that this level of exercise participation provides adequate emergency response training for State and local governments. The Commission believes that this rulemaking does not have an adverse impact on public health and safety because State emergency response personnel continuously respond to actual emergencies and experience has shown that states through a combination of full and partial participation exercises maintain an adequate level of response capability. A formal requirement for a State to return to a specific site every 7 years to participate in an exercise has proven to be unnecessary. Nonetheless, nothing prevents a State from returning to a specific site to participate in an exercise whenever it deems warranted.

Comment: Several comments suggested additional clarification to the emergency planning regulations.

Response: Although the Commission always appreciates suggestions on clarifying its regulations, the Commission at this time believes that all of the suggested changes would be inappropriate to include in this rulemaking proceeding because the suggested revisions are beyond the scope of this rulemaking.

Comment: Several commenters noted that the proposed wording for the ingestions pathway exercise was not consistent with the FEMA requirement and could be interpreted differently than intended. They suggested the following requirement, "A State should fully participate in the ingestion pathway portion of exercises at least once every six years. In States with more than one site, the State should rotate this participation from site to site."

Response: The Commission agrees with the suggested wording and has incorporated this comment in the final rule.

Discussion

The Commission finds that the current regulation has resulted in a relatively complicated description of the requirements for exercise participation by State and local governments who have offsite planning responsibility for more than one nuclear power plant. This final rule simplifies and clarifies this requirement. In addition, Appendix E is revised to reflect that the interval for an ingestion exposure pathway exercise be changed from at least once every 5 years to at least once every 6 years (FEMA's ingestion pathway exercise requirement is at least once every 6 years). The change in the interval would match the biennial frequency required for exercises of offsite plans. Further, Appendix E is also revised to eliminate the 7 year return frequency requirement because it has proven to be unnecessary to achieve the underlying purpose of the rule as well as being burdensome to states which are within the plume exposure pathway for multiple sites (FEMA does not have a return frequency requirement). Both changes assure compatibility with FEMA requirements and thus avoid confusion among licensees and State governments. Notwithstanding elimination of the 7 year return frequency requirement, the Commission believes that offsite authorities should rotate their full participation in exercises among sites if they are within the plume exposure pathway for more than one site.

The Commission codified the 7 year return frequency in the July 6, 1984 (49 FR 27733), amendment to the emergency planning regulations. This amendment provides that at least once every 7 years, all States within the plume exposure pathway EPZ of a given site must fully participate in an offsite exercise for that site. In doing so, the Commission noted that "the final rule is not totally consistent with FEMA's final regulation (44 CFR part 350). This inconsistency lies in the area of return frequency of multiple-site states as previously discussed. The FEMA position on return frequency is a significant departure from the NRC's proposed regulation of July 21, 1983 (48 FR 33307). The Commission believes that more study is needed before

deletion of the return frequency requirement can be justified."

The Commission now believes that sufficient experience has been gained in the observation and evaluation of emergency preparedness exercises at nuclear power reactor sites to conclude that the 7 year return frequency should be deleted.

The Commission has found that multi-site States, when not fully participating in an exercise at a specific site will usually partially participate at a significant level of activity every 2 years at that specific site in order to support the participation of the appropriate local governments. The Commission has found that this level of exercise participation provides adequate emergency response training for State and local governments. Additionally, a provision still exists in the regulation which permits State or local government participation in any licensee's drills or exercises. A State or local government may consider its response capability to be less than optimal because of an unusually large personnel turnover or because there have been limited responses to real emergencies in the community. The regulation still requires the licensees to provide for State or local government participation if they indicate such a desire. This final revision does not have any adverse impact on public health and safety because State emergency response personnel continuously respond to actual emergencies and experience has shown that states through a combination of full and partial participation exercises maintain an adequate level of response capability. A formal requirement for a State to return to a specific site every 7 years to participate in an exercise has proven to be unnecessary. This rulemaking deletes that unnecessary, unwarranted and burdensome requirement. Nonetheless, nothing prevents a State from returning to a specific site to participate in an exercise whenever it deems warranted.

Lastly, this revision deletes past due dates (see section F(2) (a)) because they are now meaningless.

FEMA concurs with the amendments in this rulemaking.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment; and therefore, an environmental impact statement is not required. This regulation updates and clarifies the emergency planning regulations relating to exercises. It does not involve any modification to any plant or revise the need for or the standards for emergency plans, and there is no adverse effect on the quality of the environment. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC 20036.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150–0011.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20036. Single copies of the analysis may be obtained from Michael Jamgochian, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492–3918.

Regulatory Flexibility Act Certification

The regulation does not have a significant impact on a substantial number of small entities. The final rule updates and clarifies ambiguities in the emergency planning regulations relating to exercises. Nuclear power plant licensees do not fall within the definition of small business in Section 3 of the Small Business Act, 15 U.S.C. 632, the Small Business Size Standards of the Small Business Administration in 13 CFR part 121, or the Commission's Size Standards published at 56 FR 56671 (November 6, 1991). Therefore, in accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this final rule, will not have a significant economic impact on a substantial number of small entities and that, therefore, a regulatory flexibility analysis need not be prepared.

Backfit Analysis

This regulation does not impose any new requirements on production or utilization facilities. The regulation deletes the requirement that all states within the plume exposure pathway EPZ for a given site fully participate in an offsite exercise for that specific site at least every 7 years. It also relaxes the requirement to perform an ingestion exposure pathway exercise from every 5 years to every 6 years. These changes would permit, but do not require, licensees to change their emergency plans and procedures. Therefore, these changes are not considered backfits as defined in 10 CFR 50.109 (a)(1).

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, Sec. 2902, 106 Stat 3123, (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Section 50.13, 50.54 (dd) and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80, 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. Appendix E to part 50 is amended by revising Section IV.F. to read as follows:

Appendix E to Part 50—Emergency Planning and Preparedness for Production and Utilization Facilities

* * * * *

IV. Content of Emergency Plans

* * * * *

F. Training.

1. The program to provide for: (a) The training of employees and exercising, by periodic drills, of radiation emergency plans to ensure that employees of the licensee are familiar with their specific emergency response duties, and (b) The participation in the training and drills by other persons whose assistance may be needed in the event of a radiation emergency shall be described. This shall include a description of specialized initial training and periodic retraining programs to be provided to each of the following categories of emergency personnel:

i. Directors and/or coordinators of the plant emergency organization;

ii. Personnel responsible for accident assessment, including control room shift personnel;

iii Radiological monitoring teams;

iv. Fire control teams (fire brigades);

v. Repair and damage control teams;

vi. First aid and rescue teams;

vii. Medical support personnel;

viii. Licensee's headquarters support personnel;

ix. Security personnel.

In addition, a radiological orientation training program shall be made available to local services personnel; e.g., local emergency services/Civil Defense, local law enforcement personnel, local news media persons.

2. The plan shall describe provisions for the conduct of emergency preparedness exercises as follows: Exercises shall test the adequacy of timing and content of implementing procedures and methods, test emergency equipment and communications networks, test the public notification system, and ensure that emergency organization personnel are familiar with their duties.[3]

a. A full participation[4] exercise which tests as much of the licensee, State and local emergency plans as is reasonably achievable without mandatory public participation shall be conducted for each site at which a power reactor is located. This exercise shall be conducted within two years before the issuance of the first operating license for full power (one authorizing operation above 5% of rated power) of the first reactor and shall include participation by each State and local government within the plume exposure pathway EPZ and each state within the ingestion exposure pathway EPZ. If the full participation exercise is conducted more than one year prior to issuance of an operating licensee for full power, an exercise which tests the licensee's onsite emergency plans shall be conducted within one year before issuance of an operating license for full power. This exercise need not have State or local government participation.

b. Each licensee at each site shall annually exercise the onsite emergency plan.

c. Offsite plans for each site shall be exercised biennially with full participation by each offsite authority having a role under the plan. Where the offsite authority has a role under a radiological response plan for more than one site, it shall fully participate in one exercise every two years and shall, at least, partially participate[5] in other offsite plan exercises in this period.

d. A State should fully participate in the ingestion pathway portion of exercises at least once every six years. In States with more than one site, the State should rotate this participation from site to site.

e. Licensees shall enable any State or local government located within the plume exposure pathway EPZ to participate in annual exercises when requested by such State or local government.

f. Remedial exercises will be required if the emergency plan is not satisfactorily tested during the biennial exercise, such that NRC, in consultation with FEMA, cannot find reasonable assurance that adequate protective measures can be taken in the event of a radiological emergency. The extent of State and local participation in remedial exercises must be sufficient to show that appropriate corrective measures have been taken regarding the elements of the plan not properly tested in the previous exercises.

g. All training, including exercises, shall provide for formal critiques in order to identify weak or deficient areas that need correction. Any weaknesses or deficiencies that are identified shall be corrected.

h. The participation of State and local governments in an emergency exercise is not required to the extent that the applicant has identified those governments as refusing to participate further in emergency planning activities, pursuant to 10 CFR 50.47(c)(1). In such cases, an exercise shall be held with the applicant or licensee and such governmental entities as elect to participate in the emergency planning process.

* * * * *

Dated at Rockville, MD, this 14th day of March, 1994.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 94–7065 Filed 3–24–94; 8:45 am]

BILLING CODE 7590–01–P

[3] Use of site specific simulators or computers is acceptable for any exercise.

[4] "Full participation" when used in conjunction with emergency preparedness exercises for a particular site means appropriate offsite local and State authorities and licensee personnel physically and actively take part in testing their integrated capability to adequately assess and respond to an accident at a commercial nuclear power plant. "Full participation" includes testing major observable portions of the onsite and offsite emergency plans and mobilization of state, local and licensee personnel and other resources in sufficient numbers to verify the capability to respond to the accident scenario.

[5] "Partial participation" when used in conjunction with emergency preparedness exercises for a particular site means appropriate offsite authorities shall actively take part in the exercise sufficient to test direction and control functions; i.e., (a) protective action decision making related to emergency action levels, and (b) communication capabilities among affected State and local authorities and the licensee.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 8, 12, 28, 86, 92, 200, 207, 213, 215, 219, 220, 221, 241, 243, 248, 250, 260, 510, 511, 570, 590, 750, 760, 791, 811, 812, 813, 850, 880, 881, 882, 883, 884, 885, 886, 887, 905, 912, 913, 941, 942, 960, 961, 964, 965, 968, 969, 970, and 1800

[Docket No. R–94–1712; FR–3046–F–01]

RIN 2502–AF50

Section 572, Low-Income Term; Miscellaneous Nomenclature Changes

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to make nomenclature changes throughout title 24 of the Code of Federal Regulations to remove the term "lower income" and insert in its place "low-income". These changes will conform HUD terminology to current practice required by recent legislation.

EFFECTIVE DATE: April 25, 1994.

FOR FURTHER INFORMATION CONTACT: Myra L. Ransick, Assistant General Counsel for Regulations, Department of Housing and Urban Development, room 10276, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–3055. A telecommunications device for hearing- or speech-impaired persons (TDD) is available at (202) 708–3259. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This final rule will implement section 572 of the Cranston-Gonzales National Affordable Housing Act (NAHA), Public Law 101–625 (November 28, 1990), by making nomenclature changes throughout title 24 of the Code of Federal Regulations to reflect the new use of the term "low-income" instead of the term "lower income." The amendments in section 572 of NAHA changed references in the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (the 1937 Act) by striking "lower income families" and inserting in its place "low-income families", and by striking "lower income housing" and inserting in its place "low-income housing." This rule will conform the Department of Housing and Urban Development's regulations by removing the term "lower income"

wherever it appears in a context associated with the 1937 Act, and by inserting in its place the term "low-income."

Tables following the Preamble to this rule show in list format the nomenclature changes being made by this rule to the various sections of title 24 of the Department's regulations.

The Department has determined that this document need not be published as a proposed rule, as generally required by the Administrative Procedure Act (APA), since this final rule merely conforms HUD regulations to reflect legislative changes in terminology. As a rule relating to agency practice, it is exempt from the proposed rulemaking requirements of the APA (see section 553(b)(A)).

A Finding of No Significant Impact with respect to the environment required by the National Environmental Policy Act (42 U.S.C. 4321–4347) is unnecessary, since this nomenclature change is categorically excluded under HUD regulations at 24 CFR 50.20(k).

As required by section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities because it merely makes nomenclature changes to the Department's regulations.

This final rule was listed as item 1542 in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402, 56431) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 8

Administrative practice and procedure, Civil rights, Equal employment opportunity, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Reporting and recordkeeping requirements.

24 CFR Part 12

Administrative practice and procedure, Grant programs—housing and community development, Loan programs—housing and community development, Reporting and recordkeeping requirements.

24 CFR Part 28

Administrative practice and procedure, Claims, Fraud, Penalties.

24 CFR Part 86

Administrative practice and procedure, Lobbying (Government agencies), Reporting and recordkeeping requirements.

24 CFR Part 92

Grant programs—housing and community development, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, housing standards, Lead poisoning, Loan programs—housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Social security.

24 CFR Part 207

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 213

Cooperatives, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 215

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 219

Loan programs—housing and community development, Low and moderate income housing.

24 CFR Part 220

Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Urban renewal.

24 CFR Part 221

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 241

Energy conservation, Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 243

Aged, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Reporting and recordkeeping requirements.

24 CFR Part 248

Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 250

Intergovernmental relations, Low and moderate income housing, Mortgage insurance.

24 CFR Part 260

Grant programs—housing and community development, Low and moderate income housing.

24 CFR Part 510

Lead poisoning, Loan programs—housing and community development, Relocation assistance, Reporting and recordkeeping requirements, Urban renewal, Social security.

24 CFR Part 511

Administrative practice and procedure, Grant programs—housing and community development, Lead poisoning, Low and moderate income housing, Reporting and recordkeeping requirements, Technical assistance.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—housing and community development, Grant programs—education, Guam, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands, Student aid.

24 CFR Part 590

Government property, Housing, Intergovernmental relations, Low and moderate income housing, Reporting and recordkeeping requirements, Urban renewal.

24 CFR Part 750

Grant programs—housing and community development, Intergovernmental relations, Loan programs—housing and community development, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security.

24 CFR Part 760

Certain housing assistance programs, Income verification procedures.

24 CFR Part 791

Grant programs—housing and community development, Intergovernmental relations, Public housing, Rent subsidies.

24 CFR Part 811

Public housing, Securities, Taxes.

24 CFR Part 812

Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 813

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Utilities.

24 CFR Part 850

Grant programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 882

Grant programs—housing and community development, Lead poisoning, Manufactured homes, Homeless, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 884

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

24 CFR Part 885

Aged, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 887

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 905

Aged, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Indians, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 912

Public housing, Reporting and recordkeeping requirements.

24 CFR Part 913

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 941

Grant programs—housing and community development, Loan programs—housing and community development, Public housing.

24 CFR Part 942

Aged, Individuals with disabilities, Pets, Public housing.

24 CFR Part 960

Aged, Grant programs—housing and community development, Individuals with disabilities, Public housing.

24 CFR Part 961

Drug abuse, Drug traffic control, Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 964

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 965

Energy conservation, Government procurement, Grant programs—housing and community development, Lead poisoning, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements, Utilities.

24 CFR Part 968

Grant programs—housing and community development, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 969

Grant programs—housing and community development, Low and moderate income housing, Public housing.

24 CFR Part 970

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 1800

Energy conservation, Grant programs—energy, Loan programs—energy, Penalties, Reporting and recordkeeping requirements, Solar energy.

Accordingly, the Department amends title 24 of the Code of Federal Regulations as follows:

1. The authority citation for 24 CFR parts 8, 12, 28, 86, 92, 200, 207, 213, 215, 219, 220, 221, 241, 243, 248, 250, 260, 510, 511, 570, 590, 750, 760, 791, 811, 812, 813, 850, 880, 881, 882, 883, 884, 885, 886, 887, 905, 912, 913, 941, 942, 960, 961, 964, 965, 968, 969, 970, and 1800 continues to read as follows:

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In the list below, for each entry indicated in the left column, remove the reference indicated in the middle column from wherever it appears in the section and add the reference indicated in the right column:

Section	Remove	Add
8.28(a)(1)	lower-income	low-income.
Appendix A to part 8, under the undesignated center heading "Housing Programs", paragraphs 1, 4, and 18	Lower-income	Low-income.
Appendix A to part 8, under the undesignated center heading "Housing Programs", paragraph 11	lower income	low-income.
Appendix B to part 8, paragraph 3	Lower-Income	Low-Income.
12.3, Definition for *Indian Housing Authority*, paragraph (1)	lower income	low-income.
12.3, Definition for *Public housing agency*	lower income	low-income.
28.5(c)(2)	lower income	low-income.

Section	Remove	Add
28.5(c)(2), In the list of commonly named programs	Lower-Income	Low-Income.
86.15, definitions for *Indian Housing Authority*, paragraph 1, and *Public housing agency*	lower income	low-income.
92.252(b)	lower income	low-income.
200.1005, Definition for *PHA*	lower income	low-income.
200.1105, Definition for *PHA*	lower income	low-income.
207.19(e)(9)(i)(B)(*2*)	lower income	low-income.
213.45a(b)(2)	lower income	low-income.
215.40(c)	lower income	low-income.
219.320(a)	lower income	low-income.
219.325(b)	lower income	low-income.
219.330(b)(2)	lower income	low-income.
220.511(d)(1)(ii)(B)	lower income	low-income.
221.530(a)(3)(vii)(A)(*2*)(*ii*)	lower income	low-income.
241.1005(b), definition for *Limited equity cooperative*	lower income	low-income.
241.1005(b), definition heading for *Low income families*	*Low income*	*Low-income.*
243.20 (c)(3)(ii)(A) and (c)(3)(iii)	lower income	low-income.
248.201, definition heading for *Lower Income Families*	*Lower income*	*Low-income.*
248.201, definition for *Lower Income Families*	lower income	low-income.
248.201, definition for *Plan of Action*	lower income	low-income.
248.211(a)	lower income	low-income.
248.221(b)(1) (i) and (ii)	lower income	low-income.
248.233(d) (1) and (7)	lower income	low-income.
250.6, undesignated text following paragraph (b)	lower income	low-income.
260.1	lower income	low-income.
510.52(c)(3)(iii)(B) (*2*)	lower income	low-income.
511.1(b)	lower income	low-income.
511.2, definition heading for *Lower income family*	*Lower income*	*Low-income.*
511.2, definition for *Lower income family*	lower income	low-income.
511.2, definition for *Public Housing Agency (PHA)*	lower income	low-income.
511.2, definition heading for *Rents affordable to lower income families*	*lower income*	*low-income.*
511.10(a) (1), (3), and (4) and (c)(2)(i)	lower income	low-income.
511.11(b) and (e)(1)(i)(A)	lower income	low-income.
511.14(e) and (g)(1)(iii)(A)(*2*)	lower income	low-income.
511.20(b)(2)(i)(C)	lower income	low-income.
511.20(b)(3)	lower income families.	low-income families.
511.40(b)(1)	lower income	low-income.
511.52(b)(2)	lower income	low-income.
511.71(d)	lower-income families.	low-income families.
511.71(d)	lower-income persons.	low-income persons.
511.76(c)(2)(i)	lower income	low-income.
511.81(b)(2)(i)	lower income	low-income.
570.3, definition heading for *Low and moderate income household or lower income household*	*lower income household.*	*low-income household.*
570.3, definition heading for *Low and moderate income person or lower income person*	*lower income person.*	*low-income person.*
570.3, definition heading for *Low income household*	Low income	Low-income.
570.3, definition heading for *Low income person*	*Low income*	*Low-income.*
590.1(b)	lower income	low-income.
590.5, definition heading for *Lower income families*	Lower income	Low-income.
590.7(b)(2) (iv) and (v)	lower income	low-income.
750.5, definition for *Public housing agency (PHA)*	lower income	low-income.
760.5, definition for *Public Housing Agency (PHA)*	lower income	low-income.
791.102, definition for *Public housing agency*	lower-income	low-income.
791.302(a)	lower-income	low-income.
791.402, section heading and paragraph (a)	lower income	low-income.
791.407(a)(2)	lower income	low-income.
811.102(m)	lower income	low-income.
811.202, definition for *Loan Agreement.*	lower income	low-income.
812.3(b)(1)(i) introductory text and (b)(1)(ii)	or lower-income.	
813.102, definition for *Indian Housing Authority*	*lower income*	*low-income.*
813.102, definition heading for *Lower income Family*	Lower Income	Low-Income.
813.102, definition for *Public Housing Agency.*	lower income	low-income.
813.102, definition for *Very-Low-Income Family*	*Lower Income*	*Low-Income.*
813.103	Lower Income	Low-Income.
813.104(a)	Lower Income	Low-Income.
813.105(a) introductory text, (b) introductory text, (b) (1) and (2), (c) (1) and (2)	Lower Income	Low-Income.
813.110(c)	Lower-Income	Low-Income.
850.1	lower income	low-income.
850.3, definitions for *Lower income household and Lower income unit*	lower income	low-income.
850.13(a) (2) and (3), (b) (1) and (2)	lower income	low-income.

Section	Remove	Add
850.15(a), (d) introductory text, (d) (1), (2), (4) and (6)	lower income	low-income.
850.17(a)	lower income	low-income.
850.31(f)	lower income	low-income.
850.33 (f)(4), (g)(3), (i), (j), and (r)(4)	lower income	low-income.
850.35 (d)(2)(iii)(B) and (d)(2)(iv)	lower income	low-income.
850.37(f)	lower income	low-income.
850.39(b)(1), (6), and (10), and (c)(1)	lower income	low-income.
850.61(b)	lower income	low-income.
850.151 (d), (e) paragraph heading, (e) (1), (2), (4), and (5), and (f)(1), (f)(2) introductory text, and (f)(2) (i) and (ii).	lower income	low-income.
880.101(a)(1)	lower-income	low-income.
880.103(c)	lower-income	low-income.
880.201, definition heading for *Lower Income Family*	*Lower Income*	*Low-Income.*
880.201, definition for *PHA*	lower-income	low-income.
880.204 (a) and (e)	lower-income	low-income.
880.206(h)	lower-income	low-income.
880.209(c) paragraph heading and text	*Lower-income*	*Lower-income.*
881.101(a)(1)	lower-income	low-income.
881.103(c)	lower-income	low-income.
881.201, definition heading for *Lower Income Family*	*Lower Income*	*Low-Income.*
881.201, definition for *PHA*	lower-income	low-income.
881.204 (a) and (e)	lower-income	low-income.
881.206(g)	lower-income	low-income.
881.209(c) paragraph heading and text	lower-income	low-income.
882.116(a)	Lower-Income	Low-Income.
882.117(c)(1)(i)	lower-income	low-income.
882.123(h) introductory text	lower-income	low-income.
882.204(a)(2)	Lower-Income	Low-Income.
882.207 section heading and introductory text	lower-income	low-income.
882.401(a)	lower-income	low-income.
882.402, definition for *Eligible Family ("Family")*	lower-income	low-income.
882.404(b)(5)	lower-income	low-income.
882.513 section heading and (a) paragraph heading	lower-income	low-income.
882.514(c)	Lower-Income	Low-Income.
882.601	lower-income	low-income.
882.602, definition for *Assisted Family*	lower-income	low-income.
882.701(a)	lower-income	low-income.
882.708(c)(3) (i) and (iii) introductory text, and (d)	lower income	low-income.
882.708(g)	lower-income	low-income.
882.716	lower income	low-income.
882.721(c)	lower income	low-income.
882.753(c)(3)	lower income	low-income.
883.101(a)(1)	lower income	low-income.
883.103(c)	lower-income	low-income.
883.302, definition for *Impacted jurisdiction*	lower-income	low-income.
883.302, definition for *Lower Income Family*	*Lower Income*	*Low-Income.*
883.302, definition for *PHA (Public Housing Agency)*	lower-income	low-income.
883.305(a)	lower-income	low-income.
883.305(e)	lower income	low-income.
883.309(a)(7)	lower-income	low-income.
884.102, definition for *Lower Income Family*	*Lower Income*	*Low-Income.*
884.110((c)	lower income	low-income.
884.116(a)	Lower-Income	Low-Income.
885.9 (d) and (f)(1)(iii)(A)(*2*)	lower income	low-income.
885.740 (e)(4) and (e)(6)(i)(C)(*1*)(*ii*)	lower income	low-income.
885.700, definition for *Family (eligible family)*	lower-income	low-income.
885.725(a)	lower income	low-income.
885.730(c)(3) (i) and (iii) and (g)	lower income	low-income.
885.750(c)(1)(ii)	lower income	low-income.
885.950(b)	lower income	low-income.
886.102, definition for *Lower Income Family*	*Lower Income*	*Low-Income.*
886.302, definition for *Eligible project or project*	lower income	low-income.
886.302, definition for *Lower Income Family*	*Lower Income*	*Low-Income.*
887.7, definition for *2Lower income family*	*Lower income*	*Low-income.*
887.7, definitions for *Public Housing Agency (PHA)* and *Very low-income family*	lower income	low-income.
887.105(b)(1)	lower income	low-income.
887.109	lower income	low-income.
887.151 (a)(2) and (b)	lower income	low-income.
887.455 (b) and (c)	lower income	low-income.
905.102, definitions for *Annual contributions contract (ACC), Homebuyer, Housing Manager, Indian area,* and *Indian Housing Authority (IHA).*	low income	low-income.
905.745(a)(1)	low income	low-income.
912.3(b)(1)(i) introductory text and (b)(1)(ii)	or lower-income.	

Section	Remove	Add
913.102, definitions for *Indian Housing Authority* and *Public Housing Agency (PHA)*	lower income	low-income.
913.102, definition heading for *Lower Income Family*	*Lower Income*	*Low-Income.*
913.102, definition for *Very Low-Income Family*	Lower-Income	Low-Income.
913.104(a)	Lower Income	Low-Income.
913.105(a), (b) introductory text, and (b)(4)	Lower Income	Low-Income.
913.110(c)	Lower-Income	Low-Income.
941.101(a) introductory text	lower income	low-income.
941.202(h)	lower-income	low-income.
941.209	lower-income	low-income.
941.302(d)(2)	lower income	low-income.
942.3(c)	lower income	low-income.
960.204(b)(3)	lower income	low-income.
960.205(c) (1) and (5)	lower income	low-income.
961.5, definitions for *Indian Housing Authority*, paragraph (1)	lower income	low-income.
961.5, definition for *Project*	low income	low-income.
961.5, definition for *Public housing agency (PHA)*	low income	low-income.
964.39(e)	lower income	low-income.
965.101(a)(1)(ii)	lower income	low-income.
965.472, definition for *Public Housing Agency (PHA)*	lower income	low-income.
968.101 (a) and (b)(2)	low income	low-income.
968.105, definition for *Annual contributions contract (ACC)*	lower income	low-income.
969.102	lower-income	low-income.
970.2(c)	lower income	low-income.
970.7(a)(2)	lower income	low-income.
970.9(b)(2)	lower income	low-income.
970.12	lower income	low-income.
1800.3, definition for "Family"	lower-income	low-income.

Dated: March 11, 1994.

Henry G. Cisneros,

Secretary.

[FR Doc. 94–6481 Filed 3–24–94; 8:45 am]

BILLING CODE 4210–32–P

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 905 and 941

[Docket No. R–94–1690; FR–3550–F–02]

RIN 2577–AB34

Public and Indian Housing Development—Amendment to Calculation of Total Development Cost

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This rule adopts as final an interim rule, published on November 29, 1993, which revised the Department's regulations at 24 CFR parts 905 and 941 to remove donations (non-public or non-Indian housing funds) from the Department's calculation of total development cost (TDC). The Department's experience indicated that the inclusion of donations within the TDC of projects has created unwarranted delays in the development process, and, in some cases, has been a contributory reason for cost increases in the low-income housing development process.

EFFECTIVE DATE: April 25, 1994.

FOR FURTHER INFORMATION CONTACT: For Public Housing, Janice Rattley, Director of the Office of Construction, Rehabilitation and Maintenance, Department of Housing and Urban Development, 451 Seventh Street SW., room 4136, Washington, DC 20410. Telephone (202) 708–1800 (voice) or (202) 708–4594 (TDD). (These are not toll-free numbers.)

For Indian Housing, Dom Nessi, Director, Office of Native American Programs, Department of Housing and Urban Development, 451 Seventh Street SW., room 4140, Washington, DC 20410. Telephone (202) 708–1015 (voice) or (202) 708–4594 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

1. The November 29, 1993 Interim Rule

On November 29, 1993 (58 FR 62522), HUD published an interim rule to remove donations (non-public or non-Indian housing funds) from the Department's calculation of total development cost (TDC).

Before publication of the November 29, 1993 interim rule, the regulations for HUD's public housing development program and Indian housing development program (codified, respectively, in 24 CFR parts 941 and 905) provided for the inclusion of donations (non-public or non-Indian housing funds), in calculating the total development cost (TDC). The project TDC would then be compared to the published TDC limitations currently in effect, which could result in actual development costs that are less than, the same as, or more than the published TDC limitations. Under this procedure, if the project TDC exceeded 100 percent of the published TDC limitation, notwithstanding the reason for the increase over the TDC limitation or the source of funding for the increase, the Field Office was unable to approve the project TDC without authorization of the Regional Administrator or the Assistant Secretary for Public and Indian Housing. This approval procedure was intended to verify Field Office processing, and to ensure that the project TDC would provide modest, non-luxury, durable housing at a reasonable cost. In actual fact, however, the TDC approval process, which did not take into consideration that donations may be the reason for, or the source of payment of, the increase over the TDC limits, resulted in unwarranted delays in the development process because of the amount of time it takes for the request to move through the system. In some cases, these delays were a contributory reason for cost increases in development of public and Indian housing.

The amendments to be made by the November 29, 1993 interim rule, and adopted in final by this rule, permit HUD Field Offices to calculate the project TDC relative to published TDC limitations, and to authorize housing agencies to proceed with developments, without referral to Regional Administrators or the Assistant Secretary, where funds in excess of TDC

limits are provided through donations. Where funds in excess of TDC limits will not be provided through donations, Field Offices must continue to seek authorization from the Regional Administrators or the Assistant Secretary. HUD will not provide funds to housing agencies under section 5 of the U.S. Housing Act of 1937 in excess of TDC limitations without such authorization.

The specific sections in 24 CFR parts 905 and 941 amended by the November 29, 1993 interim rule, and adopted in final by this rule, are as follows:

Sections 905.102 and 941.103 are each amended by revising the definition of "total development cost" contained in these sections to clarify that maximum total development cost excludes any donations.

Sections 905.255 and 941.204 are amended to add a new paragraph to each section that will clarify that although donations are not included in the project TDC calculations, donations must be included in the project development cost budget. A new paragraph (j) has been added to § 905.255 and a new paragraph (d) has been added to § 941.204. Additionally, § 905.255(a)(2) is amended to clarify that the "inclusion of all costs" discussed in this paragraph does not include donations.

Additionally, § 941.406 is amended to clarify that the total project cost refers to HUD funds.

2. Public Comments

The November 29, 1993 interim rule solicited public comments through January 28, 1994. By the expiration of the comment period, only one comment was received. The commenter, a public housing agency, stated that it was in full agreement with the interim rule, and supported the amendment to HUD's regulations.

Since no other comments were received on the interim rule, and since the Department intends to make no further changes, the Department will adopt as its final rule the November 29, 1993 interim rule.

Other Matters

Environmental Impact

At the time of development of the November 29, 1993 interim rule, a Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. That Finding remains applicable to this final rule, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule before publication, and, by approving it, certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The rule's major effect is on housing agencies which are state and local governmental entities. The final rule revises the manner in which the total development cost is calculated, and in so doing, reduces delays and costs in the development of public and Indian housing, which is beneficial to housing agencies.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12612, Federalism, has determined that this final rule will not have a substantial, direct effect on the States or their political subdivisions or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government. The rule removes, rather than imposes, a program requirement.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this final rule does not have a potential significant impact on family formation, maintenance, and general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This rule was listed as sequence number 1650 in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402, 56451) under Executive Order 12291 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance Program title and number is 14.850, Public and Indian Housing.

List of Subjects

24 CFR Part 905

Aged, Energy conservation, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Lead poisoning, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 941

Grant programs—housing and community development, Loan programs— housing and community development, Public housing.

Accordingly, the Department adopts as final and without change, the interim rule published on November 29, 1993 (58 FR 62522) that amended 24 CFR parts 905 and 941.

Dated: March 16, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–7035 Filed 3–24–94; 8:45 am]

BILLING CODE 4210–33–P

Office of the Inspector General

24 CFR Parts 2000, 2002, and 2003

[Docket No. R–94–1715; FR–3632–F–01]

RIN 2508–AA08

Removal of Internal Regulations: Office of the Inspector General

AGENCY: Office of the Inspector General, HUD.

ACTION: Final rule.

SUMMARY: This final rule eliminates 24 CFR part 2000, and makes conforming revisions to parts 2002 and 2003. This action complies with Executive Order 12861, by eliminating certain internal management regulations that are not required by law.

EFFECTIVE DATE: April 25, 1994.

FOR FURTHER INFORMATION CONTACT: Emmett N. Roden, Assistant General Counsel, Inspector General and Administrative Proceedings Division, Office of General Counsel, room 10251, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–2350 or (202) 708–3259 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Justification for Final Rulemaking

In general, the Department publishes a rule for public comment before issuing

a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest." (24 CFR 10.1) The Department finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is unnecessary because the rule relates to internal agency organization and management and because the provisions to be removed by this rule are not required by law and are duplicative of statutory provisions or delegations of authority that remain in effect.

Background

The Inspector General Act of 1978 (5 U.S.C. app.) was enacted to create independent and objective units to perform various investigative and monitoring functions in several Executive agencies of the Federal Government, including the Department of Housing and Urban Development (HUD). The Act confers broad authority upon the Inspector General to conduct independent investigations and audits. Consistent with its statutory independence, and with the delegation of authority to issue such rules and regulations as may be necessary to carry out the functions, powers, and duties of the Inspector General, separate regulations have been adopted at 24 CFR chapter XII (Ch. XII) that are applicable only to the Office of Inspector General (OIG) within HUD. Currently, chapter XII concerns such matters as organization, functions, and delegations of authority (part 2000), availability of information to the public (part 2002), implementation of the Privacy Act of 1974 (part 2003), and production in response to subpoenas or demands of courts or other authorities (part 2004).

On September 11, 1993, the President issued Executive Order 12861, which requires each Executive department and agency to undertake to eliminate within 3 years of the effective date of the Order not less than 50 percent of its civilian internal management regulations that are not required by law. Part 2000 is a civilian internal management regulation of the type referenced in the Executive Order. The Inspector General of HUD has determined that 24 CFR part 2000 is not required by law and, in large part, duplicates the provisions of the Inspector General Act or of various published delegations of authority that remain in force. Accordingly, this final rule eliminates part 2000 and amends parts 2002 and 2003, to the extent that those parts contain references to part 2000. (Part 2004 does not contain references to part 2000.)

Other Matters

Environmental Review

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures in this document relate only to internal administrative procedures that do not relate to the physical condition of project areas or building sites and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act of 1969.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule eliminates unnecessary regulations. There are no anticompetitive discriminatory aspects of the rule with regard to small entities, and there are not any unusual procedures that would need to be complied with by small entities.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. The rule is limited to eliminating unnecessary or duplicative regulations.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 2000

Organization and functions (Government agencies).

24 CFR Part 2002

Freedom of information.

24 CFR Part 2003

Privacy.

For the reasons set out in the preamble, chapter XII of title 24 of the Code of Federal Regulations is amended as follows:

PART 2000—ORGANIZATION, FUNCTIONS AND DELEGATIONS OF AUTHORITY—[REMOVED]

1. Part 2000 is removed and reserved.

PART 2002—AVAILABILITY OF INFORMATION TO THE PUBLIC

2. The authority citation for part 2002 is revised to read as follows:

Authority: 5 U.S.C. 552; Freedom of Information Reform Act of 1986 (Pub. L. 99–570); Inspector General Act of 1978 (5 U.S.C. App.); 42 U.S.C. 3535(d); Delegation of Authority, Jan. 9, 1981 (46 FR 2389).

3. Section 2002.3(a) is revised to read as follows:

§ 2002.3 Request for records.

(a) A request for Office of Inspector General records may be made in person during normal business hours at any office where Office of Inspector General employees are permanently stationed. Although oral requests may be honored, a requester may be asked to submit the request in writing. A written request may be addressed to:

(1) Any Office of Inspector General employee at any location where that employee is permanently stationed; or

(2) The Office of Inspector General, Department of Housing and Urban Development, Washington, DC 20410.

* * * * *

4. Section 2002.17 is amended by revising paragraph (a) and the first sentence of paragraph (e) introductory text, to read as follows:

§ 2002.17 Time limitations.

(a) Upon receipt of a request for records, the appropriate Assistant

Inspector General or an appointed designee will determine within ten working days whether to grant the request. The Assistant Inspector General or designee will notify the requestor immediately in writing of the determination and the right of the person to request a review by the Inspector General of an adverse determination.

* * * * *

(e) In unusual circumstances as specified in this paragraph, and subject to the concurrence of any Assistant Inspector General or appointed designee, the time limits prescribed in either paragraph (a) or (c) of this section may be extended. * * *

* * * * *

5. Section 2002.19 is amended by revising the first sentence to read as follows:

§ 2002.19 Authority to release records or copies.

Any Assistant Inspector General or an appointed designee is authorized to release any record (or copy) pertaining to activities for which he or she has primary responsibility, unless disclosure is clearly inappropriate under this part. * * *

6. Section 2002.21 is amended by revising the first sentence of paragraph (a) introductory text, to read as follows:

§ 2002.21 Authority to deny requests for records and form of denial.

(a) An Assistant Inspector General may deny a request for a record. * * *

* * * * *

PART 2003—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

7. The authority citation for part 2003 continues to read as follows:

Authority: 5 U.S.C. 552a; 5 U.S.C. App. (Inspector General Act of 1978); 42 U.S.C. 3535(d).

8. Section 2003.2 is revised to read as follows:

§ 2003.2 Definitions.

For purposes of this part:

Department means the OIG, except that in the context of §§ 16.1(d); 16.11(b)(1), (3), and (4); and 16.12(e), when those sections are incorporated by reference, the term means the Department of Housing and Urban Development.

Privacy Act Officer means an Assistant Inspector General.

Privacy Appeals Officer means the Inspector General.

9. Section 2003.4 is amended by revising the second sentence to read as follows:

§ 2003.4 Officials to receive requests and inquiries.

* * * Written requests may be addressed to the appropriate Privacy Act Officer at: Office of Inspector General, Department of Housing and Urban Development, Washington, DC 20410.

Dated: March 11, 1994.

Susan Gaffney,

Inspector General

[FR Doc. 94–7036 Filed 3–24–94; 8:45 am]

BILLING CODE 4210–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF–356; RE: Notice No. 783]

RIN 1512–AA07

The Hames Valley Viticultural Area (93F–009P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in southern Monterey County, California, to be known as "Hames Valley." The petition was submitted by Mr. Barry C. Jackson of the Harmony Wine Company on behalf of Valley Farm Management, Soledad, California, and Mr. Bob Denney & Associates, Visalia, California. The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify the wines they may purchase, and will help winemakers distinguish their products from wines made in other areas.

EFFECTIVE DATE: April 25, 1994.

FOR FURTHER INFORMATION CONTACT: Robert White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new part 9 to 27 CFR, for the listing of approved American viticultural areas.

Section 4.25a(e)(1), Title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in subpart C of part 9.

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on the features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map with the boundaries prominently marked.

Petition

ATF received a petition from Mr. Barry C. Jackson of the Harmony Wine Company to establish a viticultural area in southern Monterey County, California, to be known as "Hames Valley." Mr. Jackson submitted the petition on behalf of Valley Farm Management, Soledad, California, and Mr. Bob Denney & Associates, Visalia, California. The Hames Valley viticultural area is located approximately three miles west of the town of Bradley and some seven miles north of Lake Nacimiento. It is located totally within the larger and previously established Monterey viticultural area. As stated in the original petition and letter from the petitioner dated April 27, 1993, there are several existing vineyards within the area that comprise approximately 630 acres planted to grapes. No wineries are currently located within the Hames Valley area. The size of the area is about sixteen square miles or approximately 10,240 acres.

Notice of Proposed Rulemaking

In response to Mr. Jackson's petition, ATF published a notice of proposed rulemaking, Notice No. 783, in the **Federal Register** on October 27, 1993 (58 FR 57764), proposing the establishment of the Hames Valley viticultural area. The notice requested comments from all interested persons by December 27, 1993.

Comments to Notice of Proposed Rulemaking

One comment was received in response to the notice of proposed rulemaking (Notice No. 783). The comment was from Mr. Robert H. Denney and Ms. Shelley B. Denney of Robert Denney & Associates, one of the petitioners for the establishment of the Hames Valley viticultural area. This commenter states that the existing Monterey viticultural area covers a vast geographic and climatic area, from the cool Salinas Valley floor area close to Monterey Bay to inland valleys and foothills seventy miles to the south.

According to Mr. and Ms. Denney, these southern valleys exhibit vastly different coastal influences and growing conditions. As a result, the varieties grown, their yields, quality characteristics and flavor components vary widely from Soledad on the north to Hames Valley on the south.

Mr. and Ms. Denney state that, as growers and small business people, it is important to their economic well being to be able to differentiate the wine grapes they grow in Hames Valley from those produced in the cooler regions of the Monterey viticultural area. They further state that by being able to differentiate their grapes and, ultimately through their own efforts, the wineries that purchase their grapes, as well as the consumer, can identify and seek out their product for its unique character.

Evidence That Viticultural Area Name Is Widely Known

The name Hames Valley has been associated with this area since the latter part of the nineteenth century. The petitioner cites Donald T. Clark, *Monterey County Place Names*, p. 201 (1991), which states that the valley was named for John Hames who had extensive land holdings in the area. In addition, the name Hames Valley appears on the U.S.G.S. Bradley Quadrangle, 15 minute series, map of Bradley, California, and also appears on the U.S.G.S. 7.5 minute series map entitled Hames Valley. Additionally, the petitioner notes that there is a creek which runs through the valley named Hames Creek.

Evidence of Boundaries

Hames Valley is located in the eastern foothills of the Santa Lucia Range, west of the confluence of the Salinas, San Antonio, and Nacimiento Rivers. The watershed of Hames Creek is the defining feature of the appellation. Hames Valley is located wholly within the larger, previously approved Monterey viticultural area. A portion of the boundaries of the Monterey viticultural area form the northern and western boundaries of Hames Valley. Swain Valley and the Salinas River form part of the eastern boundary. The ridgeline that separates Hames Valley from the San Antonio River forms the balance of the eastern and southern boundaries.

Geographical Features

Hames Valley is a small east-west oriented valley, west of the generally north-south orientation of the meandering Salinas River. Formed by the watershed of Hames Creek, Hames Valley thrusts its way seven miles into the eastern flank of the Santa Lucia Mountains. Hames Creek empties into the Salinas River approximately two miles downstream from the confluence of the San Antonio and Salinas Rivers. Hames Valley is separated from the San Antonio River by a ridge averaging 1,500 feet in elevation, the highest peak at 1,984 feet. A similar ridgeline forms the northern boundary and separates Hames Valley from the Salinas River.

The general topography within the valley consists of gently sloping alluvial fans and associated terraces. Drainages are generally well defined.

Soils

The petitioner submitted a composite map of the Hames Valley area compiled from the Soil Survey of Monterey County, California, U.S.D.A. Soil Conservation Service, U.S. Forestry Service, University of California Agricultural Experiment Station (1972). According to this map, the principal soils in the area are gravelly sandy loams of the Lockwood series. These comprise approximately 75 percent of the soil types present. Lesser amounts of Chamise shaly loams and Nacimiento silty clay loams are also present. All current viticulture takes place in the Lockwood series soils. Soils in the surrounding areas are also silty and shaly loams, but are located on 30 to 50 percent slopes and are of different compositions. The preponderance of the Lockwood shaly clay loam and the geomorphology (flat, well defined valley floor) set the Hames Valley apart from the surrounding mountainous areas.

Climate

With regard to climate, the petitioner submitted a study by A.N. Kasimatis, Extension Viticulturist, University of California, Davis (August 7, 1970). The study shows that heat summation for the Hames Valley-Bradley area is generally in the 3200 to 3500 degree-day range. This corresponds to a warm region III, similar to the King City and Paso Robles areas. This differs from the generally cooler climate (region I/II) for the Gonzales, Soledad, and Greenfield area, farther north.

Regarding other climatic factors, the petitioner stated that rainfall in the Hames Valley area averages 10 to 12 inches annually.

The petitioner further stated that the east-west axis of the Hames Valley relative to the north-south orientation of the Salinas Valley results in a reduced wind stress factor in the Hames Valley area. Windspeed builds up later in the day and at reduced velocities relative to the "wind-tunnel" effect in the Gonzales-Soledad-Greenfield area. This results in shorter overall exposure to wind stress, from both a time and wind velocity standpoint.

In sum, the following factors differentiate the Hames Valley from the adjacent Salinas Valley:

(a) An east-west axis relative to the general north-south orientation of the Salinas Valley.

(b) A generally warmer microclimate: Region III vs. region I/II.

(c) Higher overall elevation: 500 to 800 feet for Hames Valley, 100 to 500 feet for the Salinas Valley.

(d) Later daily windspeed build-up and duration of wind.

(e) More homogeneous soil profile: Hames Valley with one principal soil type; Salinas Valley, over 70 soil types.

(f) Geographically distinct and separate from the Salinas River Valley.

Viticultural Area Boundary

The boundary of the Hames Valley viticultural area may be found on one United States Geological Survey map, entitled Bradley Quadrangle, 15 minute series, with a scale of 1:62,500. The boundary is described in § 9.147.

Executive Order 12866

It has been determined that this rule is not a significant regulatory action, because it will not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) Create

a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. This process merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Designation of a viticultural area itself has no significant economic impact because any commercial advantage can come only from consumer acceptance of wines made from grapes grown within the area. In addition, no new recordkeeping or reporting requirements are imposed. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Robert White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Paragraph 2. Subpart C is amended by adding § 9.147 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.147 Hames Valley.

(a) *Name.* The name of the viticultural area described in this section is "Hames Valley."

(b) *Approved maps.* The appropriate map for determining the boundary of the Hames Valley viticultural area is one U.S.G.S. 15 minute series topographical map, titled Bradley Quadrangle, California, edition of 1961, with a scale of 1:62,500.

(c) *Boundary.* The Hames Valley viticultural area is located in southern Monterey County in the State of California. The boundary is as follows:

(1) Beginning at the southeast corner of section 26, T. 23 S., R. 10 E., which coincides with the point where the 640 foot contour line crosses the Swain Valley drainage, the boundary proceeds in a straight line across section 26 to the northwest corner of section 26, T. 23 S., R. 10 E.;

(2) Then west northwest in a straight line across sections 22, 21, 20, and 19, T. 23 S., R. 10 E., to the northwest corner of section 24, T. 23 S., R. 9 E.;

(3) Then southeast in a straight line across sections 24, 25, 30, 31, and 32, to the southeast corner of section 5, T. 24 S., R. 10 E.;

(4) Then east southeast in a straight line across section 9 to the southeast corner of section 10, T. 24 S., R. 10 E.;

(5) Then east southeast in a straight line for approximately 2.25 miles to Hill 704, located in section 18, T. 24 S., R. 11 E.;

(6) Then north northwest in a straight line for approximately 1.35 miles to Hill 801, located near the northwest corner of section 7, T. 24 S., R. 11 E., and then continue in a straight line to the northwest corner of section 6, T. 24 S., R. 11 E.;

(7) Then in a generally northwesterly direction along the Salinas River for approximately 1 mile to where the Swain Valley drainage enters the Salinas River about .11 mile south of the northern boundary line of section 36, T. 23 S., R. 10 E.;

(8) Then in a westerly direction for approximately .75 mile along the Swain Valley drainage to the southeast corner of section 26, T. 23 S., R. 10 E., the point of beginning.

Signed: February 9, 1994.

Daniel R. Black,

Acting Director.

Approved: March 15, 1994.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 94–7066 Filed 3–24–94; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[AG Order No. 1857–94]

Delegation of Authority Under the National Cooperative Research and Production Act of 1993, As Amended and Redesignated by the National Cooperative Production Amendments of 1993

AGENCY: Office of the Attorney General, Justice.

ACTION: Final rule.

SUMMARY: The National Cooperative Research Act of 1984 has been amended by the National Cooperative Production Amendments of 1993 to include joint ventures for production within its coverage and redesignated as the "National Cooperative Research and Production Act of 1993." The Act now provides persons engaging in eligible joint ventures for production, as well as persons engaging in joint research and development ventures, with the opportunity to reduce their potential liability for damages under the antitrust laws, provided they file with the Attorney General and the Federal Trade Commission a timely notification concerning the organization and objectives of their venture. The Attorney General or Federal Trade Commission must then publish a notice in the **Federal Register** that identifies the parties to the venture and describes generally the area of planned activity of the venture. The National Cooperative Production Amendments of 1993 also impose certain reporting requirements on the Attorney General. Due to the antitrust-related nature of these notification, publication and reporting functions, the Attorney General has delegated her authority under the Act to the Assistant Attorney General, Antitrust Division.

EFFECTIVE DATE: March 15, 1994.

FOR FURTHER INFORMATION CONTACT: Constance K. Robinson, Deputy Director of Operations, Antitrust Division; U.S. Department of Justice; 10th Street and

Constitution Avenue, NW., room 3214; Washington, DC 20530. Telephone (202) 514–3544.

SUPPLEMENTARY INFORMATION: This order is an internal delegation of authority. It is being published and placed in the Code of Federal Regulations for the general information of the public. This order is not a rule within the meaning of either Executive Order 12291, or the Regulatory Flexibility Act, 5 U.S.C. 601–612. The Department of Justice is issuing this rule as a final rule because it is a "rule of agency organization, procedure, or practice" within the meaning of 5 U.S.C. 553(b).

List of Subjects in 28 CFR Part 0

Authority delegations (government agencies), Government employees, Organization and functions (government agencies), Intergovernmental relations.

By virtue of the authority vested in me, as Attorney General, by 28 U.S.C. 509, 510, and 5 U.S.C. 301, part 0 of title 28 of the Code of Federal Regulations is hereby amended as follows:

PART 0—[AMENDED]

The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

2. Section 0.41 is amended by adding new paragraph (i) and revising paragraph (k) to read as follows:

§ 0.41 [Amended]

* * * * *

(i) Acting on behalf of the Attorney General with respect to sections 4(b), 4(c) and 4(d) of the National Cooperative Production Amendments of 1993, Pub. L. No. 103–42, 107 Stat. 117 (15 U.S.C. 4305 note).

* * * * *

(k) Acting on behalf of the Attorney General with respect to section 6 of the National Cooperative Research and Production Act of 1984, Pub. L. 98–462, 98 Stat. 1815, as amended by the National Cooperative Production Amendments of 1993, Pub. L. No. 103–42, 107 Stat. 117 (15 U.S.C. 4305).

Dated: March 15, 1994.

Janet Reno,

Attorney General.

[FR Doc. 94–6992 Filed 3–24–94; 8:45 am]

BILLING CODE 4410–10–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 86

[AMS–FRL–4854–6]

Amended Heavy-Duty Averaging, Banking, and Trading Credit Accounting Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule makes two changes to the existing Averaging, Banking, and Trading (ABT) regulations for manufacturers of heavy-duty engines, under EPA's motor vehicle emission control program. Beginning with the final reports due in 1993 for the 1992 model year engines, heavy-duty engine manufacturers participating in the ABT program are required to use credits scheduled to expire in the earliest model year before using credits that would expire in later model years. EPA has concluded that the benefits intended to be derived from the ABT program are more likely to be realized by this credit accounting method than by the credit accounting method in the existing regulations. Therefore, the intent of this change is to correct an unintended effect in the existing regulations. This action also extends the reporting period for final reports from 180 days to 270 days after the end of the model year. This extension of reporting time will provide manufacturers additional time to collect sales data for calculating ABT credits and thus improve the accuracy of the credit information submitted to EPA.

EFFECTIVE DATE: This final rule is effective on April 25, 1994.

ADDRESSES: Materials relevant to this rule are contained in Public Docket No. A–92–30 at the following address: U.S. Environmental Protection Agency, 401 M Street SW., Washington DC 20460. The docket is available for public inspection from 8:30 a.m. until 12 noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Ms. Paulina Chen, U.S. EPA, Manufacturers Operations Division (6405J), 401 M Street SW., Washington DC, 20460, Telephone: (202) 233–9249.

SUPPLEMENTARY INFORMATION:

I. Introduction

The ABT program was developed to provide flexibility for manufacturers to use a mix of emission control technology and minimize the costs associated with meeting increasingly stringent emission standards. This flexibility in turn creates environmental benefit by providing incentive in the form of credits for the earlier introduction of cleaner engines into the market. In addition, environmental benefits are derived from a 20 percent discount on all banked and traded credits. As an additional environmental safeguard, credit life is limited to assure adequate in-use overlap between credit-generating and credit-using vehicles.

The Averaging, Banking, and Trading (ABT) program regulations promulgated on July 26, 1990 prohibit heavy-duty engine manufacturers from banking and withdrawing emission credits from the same averaging set in the same model year. See 40 CFR 86.091–15(a)(2)(iii). According to the credit accounting method in the regulations, a manufacturer must first combine all transactions for an averaging set in a given model year. The manufacturer could then bank any excess credits or withdraw credits if there is a credit shortfall. This is similar to the last-in-first-out inventory accounting system (LIFO), because the most recently generated credits must be used first to average before older credits can be withdrawn from the bank. This provision has been a source of confusion for some members of the regulated industry. On May 29, 1992, the Engine Manufacturers Association (EMA) met with EPA to explain why its members thought that § 86.091–15(a)(2)(iii) allowed them to both withdraw previously banked credits and deposit new credits in the same model year and averaging set. In addition, EMA suggested that LIFO credit accounting removed a certain amount of expected flexibility from the ABT program and reduced the incentives for earlier introduction of cleaner engine technology. EPA subsequently informed EMA that § 86.091–15(a)(2)(iii) clearly provided for LIFO credit accounting, but that the Agency would review its previous decision and consider implementing a first-in-first-out (FIFO) credit accounting method as suggested by EMA.

After comparing the two credit accounting methods, EPA has concluded that the benefits intended to be derived from the ABT program are more likely to be realized under the FIFO credit accounting method, and that LIFO credit accounting may reduce the program's effectiveness in providing these benefits.

Today's action amends the credit accounting method used in the ABT program such that manufacturers must

utilize the credits generated in the earliest model years before using later credits to cover credit needs. EPA believes that this accounting procedure is more likely to produce the benefits intended from the ABT program and will avoid the unintended reduction in program effectiveness that could occur under the current LIFO credit accounting procedure. Forcing manufacturers to average first with new credits from cleaner technology engines may actually encourage a manufacturer to continue using dirtier technology in the years when previously banked credits are still available, to avoid the loss of these banked credits through expiration. The current LIFO procedures could therefore have the unintended and adverse impact of delaying the introduction of cleaner technology until manufacturers have depleted their bank of credits. That result would be contrary to the goals of the ABT program.

In addition, today's action extends the time period for submitting corrections to end-of-year reports from 180 days after the end of the model year to 270 days after the end of the model year. This extension will provide manufacturers a more equitable and reasonable time period than previously allowed for collecting first delivery information on their engines.

The reasons for these changes to the ABT program are explained in greater detail in the preamble to the notice of proposed rulemaking (NPRM) published on June 10, 1993 (58 FR 32498).

EPA proposed these changes to the ABT program in conjunction with the NPRM of June 10, 1993 for the Clean Fuels Fleet Emissions Standards, Conversions, and General Provisions (CFF). EPA published a second notice on July 1, 1993 which indicated that a public hearing on that rule would not address the ABT portion of the NPRM, unless otherwise requested. No request for a hearing was made, and the comment period for the ABT portion closed on August 2, 1993. Finally, EPA also split off the ABT portion from the CFF rulemaking in order to expedite a final ABT rule. EPA will issue a separate final rulemaking for the CFF program.

This preamble provides a description of today's action and includes a summary of the major comments received on relevant portions of the NPRM and EPA's responses to those comments.

II. Public Participation

No public hearing was requested on the proposed ABT changes, and no hearing was held. EPA received written comments from the Detroit Diesel Corporation (DDC), Engine Manufacturers Association (EMA), Manufacturers of Emission Controls Association (MECA), the Natural Resources Defense Council (NRDC), the American Lung Association (ALA), and Michael Walsh. Comments have been placed in Docket No. A–92–30 (see ADDRESSES above). EPA has carefully reviewed all comments, and the following discussion addresses all major comments.

III. Analysis of Comments

A. Meaning of 40 CFR 86.091–15(a)(2)(iii)

40 CFR 86.092–15(a)(2)(iii) states that: Engine families within a given averaging set may not both generate and use like emission credits in the same model year.

EMA commented that changes to this provision may not be necessary, because, as DDC also noted, § 86.091–15(a)(2)(iii) does not specify that LIFO credit accounting must be used. However, EPA believes that § 86.091–15(a)(2)(iii) clearly requires LIFO credit accounting. This is based on the text of the provision, as well as the preamble discussion of this provision in 55 FR 30599 on July 26, 1990. The discussion addresses the background and context of the provision and very clearly states that credits should not be both withdrawn and used from a given averaging set in a given model year. Both EMA and DDC noted that the preamble used the term "rolling banking" to refer to FIFO credit accounting. Although the term "rolling banking" does not appear in the preamble to the final rule for the ABT program, the term "rolling program" is addressed in the preamble and refers not to FIFO credit accounting, but to the three-year credit life, which is entirely independent of credit accounting. In any case, both EMA and DDC oppose imposition of LIFO accounting procedures. DDC rejected the LIFO interpretation on the basis that LIFO is "illogical and inconsistent with the purposes of the ABT program." EPA is in agreement with this statement and highlights this point as the main reason for this rulemaking.

B. Environmental Impact of the Credit Accounting Change Need for Further Study

NRDC, MECA and ALA raised concerns on the environmental impact of the proposed credit accounting change, suggesting that EPA withhold making any such change until the agency completed a more thorough analysis of environmental consequences, including a comprehensive evaluation of the impact of the whole ABT program.

This rulemaking only addresses two aspects of the ABT program—the credit accounting procedures and the timing of annual reports. Given the limited nature of this rulemaking, EPA does not believe a comprehensive evaluation of the entire program is necessary to determine the appropriate accounting and reporting requirements.

In addition, EPA believes that it has adequate information at this time to determine the appropriate credit accounting procedure. As described above, EPA has sufficient information now to make these determinations. Implementation of LIFO credit accounting has demonstrated to EPA's satisfaction that LIFO credit accounting does not fulfill the intention of the ABT program to provide engine manufacturers the flexibility and incentives needed to generate environmental benefits. Manufacturers generated credits in MY 1990 which they anticipated being able to use in MYs 1991–1993. At the same time, they have generated credits in MYs 1991 and 1992, which are valid to be used through MY 1996. However, because any credit usage that occurs in MYs 1991 and 1992 must, according to LIFO credit accounting, be offset first by the credits generated in MYs 1991 and 1992, the result is that the credits which are valid until 1996 are being withdrawn, while older credits, which are scheduled to expire in MY 1993, are sitting in the bank. Under LIFO credit accounting, if a manufacturer wanted to utilize the credits generated in MY 1990, they would be required to withdraw all the 1990 credits before generating new credits. Thus, there is little incentive to introduce cleaner technology until all the credits have been withdrawn. In addition, the PM standards are tightening after three model years, and manufacturers have little opportunity under LIFO credit accounting to both adjust to the 1990 standard and generate credits for the 1994 standard change.

Finally, a delay in this rulemaking would prolong the disincentives associated with LIFO credit accounting.

Environmental Impact

NRDC and MECA raised various concerns about the environmental impact of these changes, many of which were based on serious reservations about ABT programs in general. They were concerned that credits did not reflect real innovations in pollution control, but merely reflected the difference between certification levels and the level of the standard. Increased

credits therefore provided no net benefit to the environment. In that context, they were concerned that application of these changes to the 1993 reports on the 1992 model year engines would significantly increase the number of credits available to engine manufacturers, and therefore ease the burden in complying with more stringent emissions standards applicable in model years 1994 through 1996. This artificial extension of credit life would worsen air quality by allowing continued production of older, dirtier engines beyond that allowed without the credit accounting change. NRDC claimed that the proposal's theoretical arguments for the credit change have a weak analytical support, and do not support the suggested rule change.

As noted earlier, this rulemaking has a limited scope and EPA is therefore not revisiting many of the policy and other issues resolved in the rulemakings establishing the ABT program. This rulemaking is focused on the narrow issue of determining what credit accounting procedure best implements the intended goals of the ABT program, with the existence of an ABT program as a given. In that context, EPA believes that the regulatory changes in this rule are appropriate. A FIFO credit accounting provision will better serve the intended goals of the ABT program than the current LIFO accounting provision. In addition, EPA does not expect an adverse environmental impact from these changes, and over time believes the changes should benefit the environment.

First, as was explained in the preamble to the notice of proposed rulemaking (58 FR 32498, June 10, 1993), FIFO is preferred over LIFO, because LIFO may induce manufacturers to use any credits in the bank before generating new credits, for fear of having the previously banked credits expire. Thus, LIFO may reduce the incentive for manufacturers to pull ahead new technology. On the other hand, FIFO encourages manufacturers to put into production new technology in order to generate new credits and gain experience on the overall effect of the technology on emissions before it is required by standards. This experience may lead to improved reliability when new technology is implemented on a wider scale. In addition, FIFO has the added environmental benefit of having more credits discounted, because credits are banked first rather than averaged first, as under LIFO. (Averaged credits are not discounted, while banked or traded credits are.)

Second, while MECA, NRDC, and ALA claim that the increase in availability of credits in the 1994–1996 model years resulting from the switch to FIFO credit accounting is an environmental detriment, EPA emphasizes that the credits in question are credits that manufacturers have previously generated and therefore represent an emission reduction that has already taken place. Furthermore, under FIFO, credits are banked more frequently than under LIFO, because LIFO requires averaging first. Therefore, FIFO provides the additional environmental benefit of a 20% discount to more credits.

One final commenter, Michael Walsh, questioned EPA's rationale for "relaxing" the ABT requirements when a stated goal of the program was to not undercut the purpose of the Clean Air Act to promote the achievement of the greatest degree of emissions reductions available now and in the future. In support of his argument, Mr. Walsh states that the ABT program has actually been used by manufacturers to employ engine modifications to meet emission standards rather than employing more significant pollution controls (presumably particulate traps). Mr. Walsh further bolsters his argument with studies showing the health hazards associated with oxides of nitrogen and particulate matter. Finally, Mr. Walsh comments that EPA has withheld data from the public which has denied the public a reasonable opportunity to comment on the proposed rule change.

EPA has, through rulemaking, set the emission standards for heavy-duty engines at levels which reflect the greatest degree of emissions reductions available now and in the future. The Agency will work hard to ensure that overall emissions will not exceed the levels set by those standards. Indeed, the environmental safeguards built into the ABT program, safeguards which remain in effect today, are intended to ensure that overall emissions will not exceed the standards. EPA does not believe, however, that it is appropriate to dictate which emission control technologies manufacturers must use to meet those standards. A principal goal of the ABT program is to provide flexibility to the manufacturers to choose the most economically efficient means of meeting the emission standards. If manufacturers do employ less expensive emission control options to meet the standards, that is their prerogative. The overall emission levels set by the standards are not exceeded and, theoretically, resources have been allocated more efficiently. Until data is provided that overall emissions levels are being exceeded, EPA will assume that the ABT program is achieving its goals.

As for Mr. Walsh's claim that EPA is withholding data, EPA asserts that it has placed in the docket all accurate data on which it has relied to make this decision. The only data which has been withheld is confidential business information (CBI) which EPA is statutorily prohibited from releasing; even that information, if it was considered by EPA in making this decision, has been recharacterized to avoid revealing CBI and placed in the docket.

C. Not Allowing Manufacturers To Use Both LIFO and FIFO Credit Accounting

In the NPRM, EPA requested comments on whether or not the Agency should consider implementing alternative credit accounting schemes which incorporate combinations of both LIFO and FIFO. Both EMA and DDC supported the alternative of allowing manufacturers to choose freely between LIFO and FIFO (referred to hereafter as LIFO/FIFO).

First, EMA and DDC claimed that LIFO/FIFO provides the maximum credit accounting flexibility, and therefore the engine manufacturers prefer this credit accounting system. EPA believes that FIFO, in contrast with LIFO, provides the flexibility needed to encourage manufacturers to participate fully in the program. In addition, EPA believes that LIFO/FIFO would provide marginal additional flexibility over FIFO, and this additional flexibility would not be warranted in light of the concerns that the Agency has regarding use of this accounting system. These concerns are discussed later in this section.

Second, EMA and DDC commented that the ABT program has a built-in discount that is incurred when credits are calculated. Some engine families have more than one transient cycle conversion factor, and only one, the most environmentally-safe, conversion factor may be used during credit calculations. EMA and DDC indicated that this calculation results in an estimated 10–20% credit "discount." EPA points out that this fact applies to all credit accounting systems and therefore should not be considered as a reason to choose a particular accounting system. Furthermore, this "discount" applies only to those engine families containing multiple horsepower ratings.

Third, EMA and DDC were also concerned that the averaging program would no longer exist under FIFO. On the contrary, the averaging program could still be used by manufacturers when there are no previously banked credits available, such as when a manufacturer either has no banked

credits going into a model year, or in cases where the previously banked credits do not adequately cover credit needs for that model year. Under such circumstances, manufacturers may use the credits generated in the current model year in averaging and would not be required to take a discount on these credits. Credit surpluses remaining after averaging has occurred could be banked for future use, with the discount taken.

Fourth, EMA and DDC commented that under LIFO/FIFO, credit life cannot be extended, as EPA fears. Although credit life cannot be extended without the generation of new credits, EPA believes that the credit accounting system used should not allow manufacturers to circumvent the environmental safeguards that have been put into the program. LIFO and FIFO separately maximize the effects of different safeguards, and under LIFO/FIFO a manufacturer can use LIFO in some years to avoid credit discounting and FIFO in others to avoid credit expiration.[1]

NRDC, MECA, and ALA commented that EPA should not adopt the other proposed credit accounting alternatives and echoed concerns similar to those of EPA's regarding the problems associated with allowing manufacturers to use both LIFO and FIFO credit accounting. These concerns are: (1) The loophole created by LIFO/FIFO which could shield the manufacturers from the full impact, and subsequently diminish the overall effectiveness, of the environmental safeguards of the ABT program, and (2) the substantial increase in the complexity of the ABT program, which could also increase the potential for errors in credit tracking and affect the ultimate compliance findings.

In conclusion, EPA does not believe that LIFO/FIFO is more suitable than FIFO, because the apparent disadvantages of LIFO/FIFO outweigh any potential advantages that have been claimed by commenters.

D. Retroactivity

The revised regulation changes the credit accounting provision for the 1992 model year reports. End-of-year reports are due within 90 days after the end of the 1992 model year. Manufacturers can correct these 90 day reports within 180 days after their submission. Presumably all manufacturers submitted their 90 day reports prior to the publication of the NPRM. Publication of the NPRM on June 10, 1993 and delays and uncertainty about the outcome of this final rule led most manufacturers to hold off in submitting their corrections report. EPA believes that this is not a retroactive change as it applies to a report that has not yet been submitted. Given the questions raised on EPA's authority to promulgate a retroactive change to the ABT regulations, and the lack of any compelling reason to revise earlier reports, EPA has decided to not make any revisions to regulations applicable to 1991 and earlier model years.

E. Other Comments Related to Credit Accounting Change

DDC and EMA requested that EPA expedite this rulemaking to allow the use of FIFO for the final report due in 1993 on the 1992 model year, because engine manufacturers claim that they had planned their production based on the assumption that the system in effect was essentially FIFO-based. On the other hand, NRDC commented that changing the credit accounting system "midstream" for the 1992 model year, when some of the 1994 model year engines are already being produced, is not acceptable because of the impact on air quality. EPA does not want to penalize those manufacturers who pulled ahead technology for the purposes of generating credits for the 1994–1996 model years and has decided to apply this change of credit accounting at the earliest possible time. In addition, these credits represent emission reductions that have already occurred and are subject to the environmental safeguards of discounting and limited credit life.

Several comments by NRDC and MECA relate to the ABT program in general rather than to the specifics of this rulemaking. For example, the concern was raised that credits do not necessarily represent real emission reductions, but may reflect the shaving of safety margins. Responses to such comments are in the preamble to the final rule for ABT (55 FR 30584, 7/26/90).

MECA also commented on the effects of this credit accounting change on the emission control manufacturers, specifically manufacturers of oxidation catalysts. MECA summarized the environmental benefits of using this particular emission control device and pointed out that lost revenues from decreased sales will negatively impact the amount of research and development that can be performed by these manufacturers. Manufacturers assert that switching to FIFO removes the disincentive to pull ahead new technology. Pull ahead provides opportunities to gain experience with new technology before having to use the technology more widely.

F. Extension for Corrections to End-of-Year Reports

Although other commenters did not indicate any concerns with the reporting period extension for corrections to end-of-year reports, NRDC commented that this extension may cause complications when rectifying compliance problems, because any problems presumably would not be detected until nine months after the end of the model year. However, engine manufacturers still must submit their initial end-of-year reports within 90 days after the end of the model year, and the possibilities of any compliance problems would be most evident in this particular report. These compliance problems may be mitigated later when all the credit-generating engines have been tracked to points of first retail sale by the submittal of this report. EPA will have the opportunity to initiate investigations if problems appear in end-of-year reports. The change here affects only the secondary reports, which are due after manufacturers have had more time to track engines to the point of first retail sale. Finally, because of the uncertainty for the manufacturers of the content and timing of this final rule, EPA will permit manufacturers to submit their revisions to the 1992 model year end-of-year reports within 15 days after the effective date of this rule.

IV. Final Rule Requirements

As a result of today's action, manufacturers of heavy-duty engines participating in the ABT program will be required to use credits scheduled to expire in the earliest model year before using credits that would expire in later model years, beginning with reports due in 1993 for the 1992 model year. Furthermore, manufacturers will have an additional 90 days beyond the original deadline for submitting corrections to their end-of-year reports, totalling to 270 days after the end of the year to submit the final reports.

Display of OMB Control Numbers

EPA is also amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. This amendment updates the table to accurately display those information requirements contained in this final rule. This display of the OMB control number and its subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C.

[1] See "Calculating Credits Using LIFO and FIFO Credit Accounting Methods," Memorandum from Paulina Chen to the docket for this rulemaking (May 14, 1993).

3501 *et seq.)* and OMB's implementing regulations at 5 CFR 1320.

The ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary. For the same reasons, EPA also finds that there is good cause under 5 U.S.C. 553(d)(3).

V. Changes to the Proposed Rule

No changes were made to the proposed rule.

VI. Environmental Impact

EPA believes that the ABT program changes implemented today will not interfere with the program safeguards which are designed to ensure that overall emissions do not increase with the existence of the ABT program. These environmental safeguards are: the limit on credit life, the restrictions on averaging sets, and the discounting of banked or traded credits. This change in credit accounting will result in having more credits available for use in MY 1994–1996 than previously anticipated under the LIFO credit accounting system.[2] However, these credits represent emission reductions that have in fact occurred, and the credits themselves cannot exist longer than their limited credit life.

Due to the connection between credit information and confidential sales information, EPA regulations on the release of confidential business information have restricted the public's opportunity to review manufacturers' submissions of credit generation and usage. EPA is currently discussing with participating manufacturers the possibility of finding and implementing a means of allowing the public to access enough information to make general assessments of the effectiveness of the program on a regular basis. The Engine Manufacturers Association concurs that it is important to provide an ongoing opportunity for the public to evaluate the overall progress of the program. EPA and EMA expect to finalize an agreement in the near future on the periodic release of credit data in a format that would be useful to the public.

[2] For a preliminary estimate of the number of credits affected, see "Industry Aggregate of Credit Availabilities When Comparing the Use of LIFO vs. FIFO in MY 1992," Memorandum from Paulina Chen to the docket for this rulemaking (September 13, 1993).

VII. Economic Impact

The changes made today are minor adjustments to the ABT program to remove an unintended disincentive that may inhibit manufacturers from participating fully in the ABT program. The ABT program is intended to provide the flexibility necessary for heavy-duty engine manufacturers to use a mix of emission controls in such a way that will minimize the cost of meeting the established standards. These changes should help manufacturers reduce their costs of compliance with emission standards.

VIII. Administrative Designation and Regulatory Analysis

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has exempted this regulatory action from Executive Order 12866 review.

IX. Impact on Small Entities

The Regulatory Flexibility Act of 1980 requires federal agencies to consider potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis.

There will not be a significant adverse impact on a substantial number of small business entities due to the changes made to the Averaging, Banking, and Trading program, because the heavy-duty engine manufacturers affected by these regulations are not small business entities.

Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, I certify that this regulation does not have a significant adverse impact on a substantial number of small entities.

X. Reporting and Recordkeeping Requirements

The information collection requirements make no changes to those currently approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned control number 2060–0104.

XI. Statutory Authority

Authority for actions promulgated in this final rule are granted to EPA by sections 202, 206(a)(1), 207, 208, and 301 of the Clean Air Act as amended.

XII. Judicial Review

Under section 307(b) of the Clean Air Act, EPA hereby finds that these regulations are of national applicability. Accordingly, judicial review of this action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of publication. Under section 307(b)(2) of the Act, the requirements which are the subject of today's notice may not be challenged later in judicial proceedings brought by EPA to enforce these requirements.

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Air pollution control, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: March 17, 1994.

Carol M. Browner,

Administrator.

APPENDIX.—TABLE OF CHANGES

Section	Change	Reason
1a. Part 9 Authority	None	
1b. Section 9.1	Addition of new entries to table	Incorporate OMB control numbers.
2. Part 86 Authority	None	
3. § 86.092–15	Addition of new section § 86.092–15	Change credit accounting method and period for correcting end-of-year reports.
4. § 86.092–23	Addition of new section § 86.092–23	Change period for correcting end-of-year reports.
5. § 86.094–15	Amend paragraphs (a)(2)(iii) and (b)(6)(ii)	Change credit accounting method and period for correcting end-of-year reports.
6. § 86.094–23	Amend paragraph (h)(3)(iv)	Change period for correcting end-of-year reports.
7. § 86.095–23	Amend paragraph (h)(3)(iv)	Change period for correcting end-of-year reports
8. § 86.096–23	Amend paragraph (h)(3)(iv)	Change period for correcting end-of-year reports.
9. § 86.098–23	Amend paragraph (h)(3)(iv)	Change period for correcting end-of-year reports.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

1. In Part 9:

a. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

b. Section 9.1 is amended by adding the new entries under the indicated heading to the table to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES	
* * * * *	
86.092–15	2060–0104
* * * * *	
86.092–23	2060–0104
* * * * *	

PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

2. The authority citation for part 86 continues to read as follows:

Authority: Secs. 202, 203, 205, 206, 207, 208, 215, 216, 301(a), Clean Air Act as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, and 7601(a)).

Subpart A—[Amended]

3. A new § 86.092–15 is added to Subpart A to read as follows:

§ 86.092–15 NO_x and particulate averaging, trading, and banking for heavy-duty engines.

(a)(1) Heavy-duty engines eligible for the NO_x and particulate averaging, trading, and banking programs are described in the applicable emission standards sections in this subpart. Participation in these programs is voluntary.

(2)(i) Engine families with FELs exceeding the applicable standard shall obtain emission credits in a mass amount sufficient to address the shortfall. Credits may be obtained from averaging, trading, or banking, within the averaging set restrictions described in this section.

(ii) Engine families with FELs below the applicable standard will have emission credits available to average, trade, bank or a combination thereof. Credits may not be used to offset emissions that exceed an FEL. Credits may not be used to remedy an in-use nonconformity determined by a Selective Enforcement Audit or by recall testing. However, credits may be used to allow subsequent production of engines for the family in question if the manufacturer elects to recertify to a higher FEL.

(iii) Credits scheduled to expire in the earliest model year shall be used, prior to using other available credits, to offset emissions of engine families with FELS exceeding the applicable standard.

(b) Participation in the NO_x and/or particulate averaging, trading, and banking programs shall be done as follows.

(1) During certification, the manufacturer shall:

(i) Declare its intent to include specific engine families in the averaging, trading and/or banking programs. Separate declarations are required for each program and for each pollutant (i.e., NO_x and particulate).

(ii) Declare an FEL for each engine family participating in one or more of these three programs.

(A) The FEL must be to the same level of significant digits as the emission standard (one-tenth of a gram per brake horsepower for NO_x emissions and one-hundredth of a gram per brake horsepower-hour for particulate emissions).

(B) In no case may the FEL exceed the upper limit prescribed in the section concerning the applicable heavy-duty engine NO_x and particulate emission standards.

(iii) Calculate the projected emission credits (+/) based on quarterly production projections for each participating family and for each pollutant (NO_x and particulate), using the equation in paragraph (c) of this section and the applicable factors for the specific engine family.

(iv)(A) Determine and state the source of the needed credits according to quarterly projected production for engine families requiring credits for certification.

(B) State where the quarterly projected credits will be applied for engine families generating credits.

(C) Credits may be obtained from or applied to only engine families within the same averaging set as described in paragraphs (d) and (e) of this section. Credits available for averaging, trading, or banking as defined in § 86.090–2, may be applied to a given engine famil(y) (ies), or reserved as defined in § 86.091–2.

(2) Based on this information each manufacturer's certification application must demonstrate:

(i) That at the end of model year production, each engine family has a net emissions credit balance of zero or more

using the methodology in paragraph (c) of this section with any credits obtained from averaging, trading or banking.

(ii) The source of the credits to be used to comply with the emission standard if the FEL exceeds the standard, or where credits will be applied if the FEL is less than the emission standard. In cases where credits are being obtained, each engine family involved must state specifically the source (manufacturer/engine family) of the credits being used. In cases where credits are being generated/supplied, each engine family involved must state specifically the designated use (manufacturer/engine family or reserved) of the credits involved. All such reports shall include all credits involved in averaging, trading or banking.

(3) During the model year manufacturers must:

(i) Monitor projected versus actual production to be certain that compliance with the emission standards is achieved at the end of the model year.

(ii) Provide the end of-model year reports required under § 86.091–23.

(iii) Maintain the quarterly records required under § 86.091–7(c)(8).

(4) Projected credits based on information supplied in the certification application may be used to obtain a certificate of conformity. However, any such credits may be revoked based on review of end-of-model year reports, follow-up audits, and any other verification steps deemed appropriate by the Administrator.

(5) Compliance under averaging, banking, and trading will be determined at the end of the model year. Engine families without an adequate amount of actual NO_X and/or particulate emission credits will violate the conditions of the certificate of conformity. The certificates of conformity may be voided ab initio for those engine families.

(6) If EPA or the manufacturer determines that a reporting error occurred on an end-of-year report previously submitted to EPA under this section, the manufacturer's credits and credit calculations will be recalculated. Erroneous positive credits will be void. Erroneous negative credit balances may be adjusted by EPA.

(i) If EPA review of a manufacturer's end-of-year report indicates an inadvertent credit shortfall, the manufacturer will be permitted to purchase the necessary credits to bring the credit balance for that engine family to zero, at the ratio of 1.2 credits purchased for every credit needed to bring the balance to zero. If sufficient credits are not available to bring the credit balance for the engine family in question to zero, EPA may void the certificate for that engine family ab initio.

(ii) If within 180 days of receipt of the manufacturer's end-of-year report, EPA review determines a reporting error in the manufacturer's favor (i.e., resulting in a positive credit balance) or if the manufacturer discovers such an error within 180 days of EPA receipt of the end-of-year report, the credits will be restored for use by the manufacturer. For the 1992 model year, corrections to the end-of-year reports may be submitted until May 9, 1994.

(c)(1) For each participating engine family, NO_X and particulate emission credits (positive or negative) are to be calculated according to one of the following equations and rounded, in accordance with ASTM E29–67, to the nearest one-tenth of a Megagram (Mg). Consistent units are to be used throughout the equation.

For determining credit need for all engine families and credit availability for engine families generating credits for averaging programs only:

Emission credits=(StdFEL)×(CF)×(UL)×(Production)×(106)

For determining credit availability for engine families generating credits for trading or banking programs:

Emission credits=(StdFEL)×(CF)×(UL)×(Production)×(106)×(0.8)

Where:

Std=the current and applicable heavy-duty engine NO_X or particulate emission standard in grams per brake horsepower hour or grams per Megajoule.

FEL=the NO_X or particulate family emission limit for the engine family in grams per brake horsepower-hour or grams per Megajoule.

CF=a transient cycle conversion factor in BHP-hr/mi or MJ/mi, as given in paragraph (c)(2) of this section.

UL=the useful life, or alternative life as described in paragraph (f) of § 86.090–21, for the given engine family in miles.

Production=the number of engines produced for U.S. sales within the given engine family during the model year. Quarterly production projections are used for initial certification. Actual production is used for end-of-year compliance determination.

0.8=a one-time discount applied to all credits to be banked or traded within the model year generated. Banked credits traded in a subsequent model year will not be subject to an additional discount. Banked credits used in a subsequent model year's averaging program will not have the discount restored.

(2) The transient cycle conversion factor is the total (integrated) cycle brake horsepower-hour or Megajoules, divided by the equivalent mileage of the applicable transient cycle. For Otto-cycle heavy-duty engines, the equivalent mileage is 6.3 miles. For diesel heavy-duty engines, the equivalent mileage is 6.5 miles. When more than one configuration is chosen by EPA to be tested in the certification of an engine family (as described in § 86.085–24), the conversion factor used is to be based upon the configuration generating the highest conversion factor when determining credit need and the lowest conversion factor when determining credit availability for banking, trading or averaging.

(d) Averaging sets for NO_X emission credits: The averaging and trading of NO_X emission credits will only be allowed between heavy-duty engine families in the same averaging set and in the same regional category. Engines produced for sale in California constitute a separate regional category than engines produced for sale in the other 49 states. Banking and trading are not applicable to engines sold in California. The averaging sets for the averaging and trading of NO_X emission credits for heavy-duty engines are defined as follows:

(1) For Otto-cycle heavy-duty engines:

(i) Otto-cycle heavy-duty engines constitute an averaging set. Averaging and trading among all Otto-cycle heavy-duty engine families is allowed. There are no subclass restrictions.

(ii) Gasoline-fueled heavy-duty vehicles certified under the provisions of § 86.085–1(b) may not average or trade credits with gasoline-fueled heavy-duty Otto-cycle engines, but may average or trade credits with light-duty trucks.

(2) For diesel cycle heavy-duty engines:

(i) Each of the three primary intended service classes for heavy-duty diesel engines, as defined in § 86.090–2, constitute an averaging set. Averaging and trading among all diesel cycle engine families within the same primary service class is allowed.

(ii) Urban buses are treated as members of the primary intended service class where they would otherwise fall.

(e) Averaging sets for particulate emission credits. The averaging and trading of particulate emission credits will only be allowed between diesel

cycle heavy-duty engine families in the same averaging set and in the same regional category. Engines produced for sale in California constitute a separate regional category than engines produced for sale in the other 49 states. Banking and trading are not applicable to engines sold in California. The averaging sets for the averaging and trading of particulate emission credits for diesel cycle heavy-duty engines are defined as follows:

(1) Engines intended for use in urban buses constitute a separate averaging set from all other heavy-duty engines. Averaging and trading among all diesel cycle bus engine families is allowed.

(2) For heavy-duty engines, exclusive of urban bus engines, each of the three primary intended service classes for heavy-duty diesel cycle engines, as defined in § 86.090–2, constitute an averaging set. Averaging and trading between diesel cycle engine families within the same primary service class is allowed.

(3) Otto-cycle engines may not participate in particulate averaging, trading, or banking.

(f) Banking of NO_x and particulate emission credits:

(1) *Credit deposits.* (i) Under this phase of the banking program, emission credits may be banked from engine families produced during the three model years prior to the effective model year of the new HDE NO_x or particulate emission standard. Credits may not be banked from engine families made during any other model years.

(ii) Manufacturers may bank credits only after the end of the model year and after EPA has reviewed their end-of-year report. During the model year and before submittal of the end-of-year report, credits originally designated in the certification process for banking will be considered reserved and may be redesignated for trading or averaging.

(2) *Credit withdrawals.* (i) After being generated, banked/reserved credits shall be available for use three model years prior to, through three model years immediately after the effective date of the new HDE NO_x or particulate emission standard, as applicable. However, credits not used within the period specified above shall be forfeited.

(ii) Manufacturers withdrawing banked emission credits shall indicate so during certification and in their credit reports, as described in § 86.091–23.

(3) *Use of banked emission credits.* The use of banked credits shall be within the averaging set and other restrictions described in paragraphs (d) and (e) of this section, and only for the following purposes:

(i) Banked credits may be used in averaging, trading, or in any combination thereof, during the certification period. Credits declared for banking from the previous model year but unreviewed by EPA may also be used. However, they may be revoked at a later time following EPA review of the end-of-year report or any subsequent audit actions.

(ii) Banked credits may not be used for NO_x or particulate averaging and trading to offset emissions that exceed an FEL. Banked credits may not be used to remedy an in-use nonconformity determined by a Selective Enforcement Audit or by recall testing. However, banked credits may be used for subsequent production of the engine family if the manufacturer elects to recertify to a higher FEL.

(g) (1) For purposes of this paragraph (g), assume NO_x and particulate nonconformance penalties (NCPs) will be available for the 1991 and later model year HDEs.

(2) Engine families paying an NCP for noncompliance of any emission standard may not:

(i) Participate in the averaging program,

(ii) Generate emission credits for any pollutant under banking and trading, and

(iii) Use emission credits for any pollutant from banking and trading.

(3) If a manufacturer has any engine family to which application of NCPs and averaging, banking, and trading credits is desired, that family must be separated into two distinct families. One family, whose FEL equals the standard, must use NCPs only, while the other, whose FEL does not equal the standard, must use emission credits only.

(4) If a manufacturer has any engine family in a given averaging set which is using NO_x and/or particulate NCPs, none of that manufacturer's engine families in that averaging set may generate credits for banking and trading.

(h) In the event of a negative credit balance in a trading situation, both the buyer and the seller would be liable.

(i) Certification fuel used for credit generation must be of a type that is both available in use and expected to be used by the engine purchaser. Therefore, upon request by the Administrator, the engine manufacturer must provide information acceptable to the Administrator that the designated fuel is readily available commercially and would be used in customer service.

4. Section 86.092–23 is added to subpart A to read as follows:

§ 86.092–23 Required data.

(a) The manufacturer shall perform the tests required by the applicable test procedures, and submit to the Administrator the following information: *Provided, however,* That if requested by the manufacturer, the Administrator may waive any requirement of this section for testing of vehicle (or engine) for which emission data are available or will be made available under the provisions of § 86.091–29.

(b)(1)(i) Exhaust emission durability data on such light-duty vehicles tested in accordance with applicable test procedures and in such numbers as specified, which will show the performance of the systems installed on or incorporated in the vehicle for extended mileage, as well as a record of all pertinent maintenance performed on the test vehicles.

(ii) Exhaust emission deterioration factors for light-duty trucks and heavy-duty engines, and all test data that are derived from the testing described under § 86.091–21(b)(4)(iii)(A), as well as a record of all pertinent maintenance. Such testing shall be designed and conducted in accordance with good engineering practice to assure that the engines covered by a certificate issued under § 86.091–30 will meet the emission standards (or family emission limits, as appropriate) in § 86.091–9, § 86.091–10, or § 86.091–11 as appropriate, in actual use for the useful life of the engine.

(2) For light-duty vehicles and light-duty trucks, evaporative emission deterioration factors for each evaporative emission family-evaporative emission control system combination and all test data that are derived from testing described under § 86.091–21(b)(4)(i) designed and conducted in accordance with good engineering practice to assure that the vehicles covered by a certificate issued under § 86.091–30 will meet the evaporative emission standards in § 86.091–8 or § 86.091–9, as appropriate, for the useful life of the vehicle.

(3) For heavy-duty vehicles equipped with gasoline-fueled or methanol-fueled engines, evaporative emission deterioration factors for each evaporative emission family-evaporative emission control system combination identified in accordance with § 86.091–21(b)(4)(ii). Furthermore, a statement that the test procedure(s) used to derive the deterioration factors includes, but need not be limited to, a consideration of the ambient effects of ozone and temperature fluctuations, and the service accumulation effects of vibration, time, and vapor saturation

and purge cycling. The deterioration factor test procedure shall be designed and conducted in accordance with good engineering practice to assure that the vehicles covered by a certificate issued under § 86.091–30 will meet the evaporative emission standards in § 86.091–10 and § 86.091–11 in actual use for the useful life of the engine. Furthermore, a statement that a description of the test procedure, as well as all data, analyses and evaluations, is available to the Administrator upon request.

(4) (i) For heavy-duty vehicles with a Gross Vehicle Weight Rating of up to 26,000 lbs and equipped with gasoline-fueled or methanol-fueled engines, a written statement to the Administrator certifying that the manufacturer's vehicles meet the standards of § 86.091–10 or § 86.091–11 (as applicable) as determined by the provisions of § 86.091–28. Furthermore, a written statement to the Administrator that all data, analyses, test procedures, evaluations, and other documents, on which the above statement is based, are available to the Administrator upon request.

(ii) For heavy-duty vehicles with a Gross Vehicle Weight Rating of greater than 26,000 lbs and equipped with gasoline-fueled or methanol-fueled engines, a written statement to the Administrator certifying that the manufacturer's evaporative emission control systems are designed, using good engineering practice, to meet the standards of § 86.091–10 or § 86.091–11 (as applicable) as determined by the provisions of § 86.091–28. Furthermore, a written statement to the Administrator that all data, analyses, test procedures, evaluations, and other documents, on which the above statement is based, are available to the Administrator upon request.

(c) *Emission data.* (1) Emission data, including in the case of methanol fuel, methanol, formaldehyde and organic material hydrocarbon equivalent on such vehicles tested in accordance with applicable test procedures and in such numbers as specified. These data shall include zero-mile data, if generated and emission data generated for certification as required under § 86.090–26(a)(3)(i) or § 86.090–26(a)(3)(ii). In lieu of providing emission data on idle CO emissions, smoke emissions or particulate emissions from methanol-fueled diesel certification vehicles the Administrator may, on request of the manufacturer, allow the manufacturer to demonstrate (on the basis of previous emission tests, development tests, or other information) that the engine will conform with the applicable emission standards of § 86.090–8 or § 86.090–9.

(2) *Certification engines.* Emission data on such engines tested in accordance with applicable emission test procedures of this subpart and in such numbers as specified. These data shall include zero-hour data, if generated, and emission data generated for certification as required under § 86.090–26(c)(4). In lieu of providing emission data on idle CO emissions or particulate emissions from methanol-fueled diesel certification engines, or on CO emissions from petroleum-fueled or methanol-fueled diesel certification engines the Administrator may, on request of the manufacturer, allow the manufacturer to demonstrate (on the basis of previous emission tests, development tests, or other information) that the engine will conform with the applicable emission standards of § 86.091–11.

(d) A statement that the vehicles (or engines) for which certification is requested conform to the requirements in § 86.084–5(b), and that the descriptions of tests performed to ascertain compliance with the general standards in § 86.084–5(b), and the data derived from such tests, are available to the Administrator upon request.

(e) (1) A statement that the test vehicles (or test engines) with respect to which data are submitted to demonstrate compliance with the applicable standards (or family emission limits, as appropriate) of this subpart are in all material respects as described in the manufacturer's application for certification, have been tested in accordance with the applicable test procedures utilizing the fuels and equipment described in the application for certification and that on the basis of such tests the vehicles (or engines) conform to the requirements of this part. If such statements cannot be made with respect to any vehicle (or engine) tested, the vehicle (or engine) shall be identified, and all pertinent data relating thereto shall be supplied to the Administrator. If, on the basis of the data supplied and any additional data as required by the Administrator, the Administrator determines that the test vehicles (or test engine) was not as described in the application for certification or was not tested in accordance with the applicable test procedures utilizing the fuels and equipment as described in the application for certification, the Administrator may make the determination that the vehicle (or engine) does not meet the applicable standards (or family emission limits, as appropriate). The provisions of § 86.091–30(b) shall then be followed.

(2) For evaporative emission durability, or light-duty truck or heavy-duty engine exhaust emission durability, a statement of compliance with paragraph (b)(1)(ii), (b)(2), or (b)(3) of this section, as applicable.

(f) Additionally, manufacturers participating in the particulate averaging program for diesel light-duty vehicles and diesel light-duty trucks shall submit:

(1) In the application for certification, a statement that the vehicles for which certification is requested will not, to the best of the manufacturer's belief, when included in the manufacturer's production-weighted average emission level, cause the applicable particulate standard(s) to be exceeded.

(2) No longer than 90 days after the end of a given model year of production of engine families included in one of the diesel particulate averaging programs, the number of vehicles produced in each engine family at each certified particulate FEL, along with the resulting production-weighted average particulate emission level.

(g) Additionally, manufacturers participating in the NO_X averaging program for light-duty trucks shall submit:

(1) In the application for certification, a statement that the vehicles for which certification is required will not, to the best of the manufacturer's belief, when included in the manufacturer's production-weighted average emission level, cause the applicable NO_X standard(s) to be exceeded.

(2) No longer than 90 days after the end of a given model year of production of engine families included in the NO_X averaging program, the number of vehicles produced in each engine family at each certified NO_X emission level.

(h) Additionally, manufacturers participating in any of the NO_X and/or particulate averaging, trading, or banking programs for heavy-duty engines shall submit for each participating family:

(1) In the application for certification:

(i) A statement that the engines for which certification is requested will not, to the best of the manufacturer's belief, when included in any of the averaging, trading, or banking programs cause the applicable NO_X or particulate standard(s) to be exceeded.

(ii) The type (NO_X or particulate) and the projected number of credits generated/needed for this family, the applicable averaging set, the projected U.S. (49-state) production volumes, by quarter, NCPs in use on a similar family and the values required to calculate

credits as given in § 86.091–15. Manufacturers shall also submit how and where credit surpluses are to be dispersed and how and through what means credit deficits are to be met, as explained in § 86.091–15. The application must project that each engine family will be in compliance with the applicable NO_x and/or particulate emission standards based on the engine mass emissions, and credits from averaging, trading and banking.

(2) End-of-year reports for each engine family participating in any of the averaging, trading, or banking programs.

(i) These reports shall be submitted within 90 days of the end of the model year to: Director, Manufacturers Operations Division (EN–6405J), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

(ii) These reports shall indicate the engine family, the averaging set, the actual U.S. (49-state) production volume, the values required to calculate credits as given in § 86.091–15, the resulting type (NO_x or particulate) and number of credits generated/required, and the NCPs in use on a similar NCP family. Manufacturers shall also submit how and where credit surpluses were dispersed (or are to be banked) and how and through what means credit deficits were met. Copies of contracts related to credit trading must also be included or supplied by the broker if applicable. The report shall also include a calculation of credit balances to show that net mass emissions balances are within those allowed by the emission standards (equal to or greater than a zero credit balance). The credit discount factor described in § 86.091–15 must be included as required.

(iii) The 49-state production counts for end-of-year reports shall be based on the location of the first point of retail sale (e.g., customer, dealer, secondary manufacturer) by the manufacturer.

(iv) Errors discovered by EPA or the manufacturer in the end-of-year report, including changes in the 49 state production counts, may be corrected up to 180 days subsequent to submission of the end-of-year report. Errors discovered by EPA after 180 days shall be corrected if credits are reduced. Errors in the manufacturer's favor will not be corrected if discovered after the 180 day correction period allowed.

(i) Failure by a manufacturer participating in the averaging, trading, or banking programs to submit any quarterly or end-of-year report (as applicable) in the specified time for all vehicles and engines that are part of an averaging set is a violation of section 203(a)(1) of the Clean Air Act for each such vehicle and engine.

(j) Failure by a manufacturer generating credits for deposit only in either the HDE NO_x or particulate banking programs to submit their end-of-year reports in the applicable specified time period (i.e., 90 days after the end of the model year) shall result in the credits not being available for use until such reports are received and reviewed by EPA. Use of projected credits pending EPA review will not be permitted in these circumstances.

(k) Engine families certified using NCPs are not required to meet the requirements outlined above.

5. Section 86.094–15 of subpart A is amended by revising paragraphs (a)(2)(iii) and (b)(6)(ii) to read as follows:

§ 86.094–15 NO_x and particulate averaging, trading, and banking for heavy-duty engines.

(a) * * *

(2) * * *

(iii) Credits scheduled to expire in the earliest model year shall be used, prior to using other available credits, to offset emissions of engine families with FELs exceeding the applicable standard.

* * * * *

(b) * * *

(6) * * *

(ii) If within 180 days of receipt of the manufacturer's end-of-year report, EPA review determines a reporting error in the manufacturer's favor (i.e. resulting in a positive credit balance) or if the manufacturer discovers such an error within 180 days of EPA receipt of the end-of-year report, the credits will be restored for use by the manufacturer.

* * * * *

6. Section 86.094–23 of subpart A is amended by revising paragraph (h)(3)(iv) to read as follows:

§ 86.094–23 Required data.

* * * * *

(h) * * *

(3) * * *

(iv) Errors discovered by EPA or the manufacturer in the end-of-year report, including changes in the 49 state production counts, may be corrected up to 180 days subsequent to submission of the end-of-year report. Errors discovered by EPA after 180 days shall be corrected if credits are reduced. Errors in the manufacturer's favor will not be corrected if discovered after the 180 day correction period allowed.

* * * * *

7. Section 86.095–23 of subpart A is amended by revising paragraph (h)(3)(iv) to read as follows:

§ 86.095–23 Required data.

* * * * *

(h) * * *

(3) * * *

(iv) Errors discovered by EPA or the manufacturer in the end-of-year report, including changes in the 49 state production counts, may be corrected up to 180 days subsequent to submission of the end-of-year report. Errors discovered by EPA after 180 days shall be corrected if credits are reduced. Errors in the manufacturer's favor will not be corrected if discovered after the 180 day correction period allowed.

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[FR Doc. 94–6951 Filed 3–24–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[IL 12–26–5785; FRL–4854–5]

Approval and Promulgation of Implementation Plan; Illinois

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On July 17, 1992, the United States Environmental Protection Agency (US EPA) proposed to promulgate Volatile Organic Compound (VOC) emission limits for coating operations at the General Motors (GM) Electro-Motive Division (EMD) facility in LaGrange (Cook County, Illinois), as representing Reasonably Available Control Technology (RACT) for EMD's "topcoat" and "final repair coating" operations. At that time, the USEPA also proposed a compliance date of one year from the date of final promulgation. In this rule USEPA is promulgating the emission limits and compliance date.

EFFECTIVE DATE: This rule is effective April 25, 1994.

ADDRESSES: The docket for this action (Docket No. 5–AR–91–2), which contains the public comments, is located for public inspection and copying at the following address. We recommend that you contact Randolph O. Cano before visiting the Chicago location and Jacqueline Brown before visiting the Washington, DC location. A reasonable fee may be charged for copying.

U.S. Environmental Protection Agency, Region 5, Regulation Development Branch, Eighteenth Floor, Southeast, 77 West Jackson Street, Chicago, Illinois 60604, (312) 886–6036.

U.S. Environmental Protection Agency, Docket No. 5–AR–91–2, Air Docket (LE–131), room M1500, Waterside Mall, 401 M Street, SW, Washington, DC 20460, (202) 245–3639.

FOR FURTHER INFORMATION CONTACT: Steve Rosenthal, Regulation

Development Branch, U.S. Environmental Protection Agency, Region 5, (312) 886–6052, at the Chicago address indicated above.

SUPPLEMENTARY INFORMATION:

Background

On June 29, 1990, the USEPA promulgated Federal stationary source VOC control measures representing RACT for emission sources located in six northeastern Illinois (Chicago area) counties: Cook, DuPage, Kane, Lake, McHenry and Will. 55 FR 26814. The USEPA also took final rulemaking action on certain VOC rules previously adopted and submitted by the State of Illinois for inclusion in its State Implementation Plan (SIP).

Among the State rules that the USEPA disapproved was title 35 of the Illinois Administrative Code (35 IAC) subpart F, § 215.204(m), which established VOC limits for "Existing Diesel-Electric Locomotive Coating Lines in Cook County." The USEPA based this disapproval on its determination that the emission limits prescribed by the State did not represent RACT for EMD's locomotive coating operations. In lieu of this State rule, the USEPA promulgated more stringent emission limits for diesel-electric locomotive coating operations, codified at 40 CFR 52.741(e)(1)(i)(M). The only source affected by this rule is GM's EMD facility in LaGrange, Illinois.

In response to the USEPA's actions, pursuant to section 307(d)(7) of the Clean Air Act (ACT), GM filed a petition for administrative reconsideration with the USEPA Regional Administrator for Region 5.[1] GM requested that the USEPA reconsider its decision to subject GM to a VOC limit of 3.5 pounds per gallon (lb/gal.) for its topcoat and final repair coating operations.[2]

On January 4, 1991 (56 FR 480), and May 31, 1991 (56 FR 24722), the USEPA announced a stay of the emission limitations and compliance date for EMD's topcoat and final repair coating operations until the USEPA completed its reconsideration. The USEPA also stated in those rules that the stay was to remain in effect until withdrawn by a subsequent rule, but only if and as necessary to complete reconsideration. The USEPA further indicated that, upon taking final rulemaking, it would publish a rule in the **Federal Register** notifying the public of the withdrawal of the stay.

The USEPA also stated in the May 31, 1991, notice that if the reconsideration resulted in emissions limitations and standards that were stricter than the applicable (on May 31, 1991) Illinois rules, the USEPA would propose a compliance period of one year from the date of final action on the reconsideration.

On July 17, 1992, (57 FR 31678), the USEPA proposed VOC RACT limits for EMD topcoat and repair coating operations of 3.5 lb/gal. The USEPA's analysis was based in large part on the fact that this limit was consistent with both the Control Technique Guidelines (CTG) for miscellaneous metal parts and products; and that coatings meeting this limit were being used successfully at the General Electric Company's (GE) Erie, Pennsylvania locomotive coating operations. For more information about the background and substance of these proposed limits, please see the July 17, 1992, proposed rule.

Because the 3.5 lbs./gal. limit is more stringent than the Illinois rule in effect on May 31, 1991, the USEPA also proposed on July 17 to provide a compliance date of one year from the date of final action on reconsideration. This one-year compliance period was the general compliance period provided in the June 29, 1990, Federal RACT rules. Finally, the USEPA proposed to withdraw the stay pending reconsideration.

In the July 17 notice, the USEPA established an August 17, 1992 deadline for public comment. At the request of GM, USEPA extended the comment period to September 16, 1992, (57 FR 42536).

Comments by General Motors

On September 15, 1992, GM submitted comments to the USEPA on the proposal. In its comments, GM objected to the USEPA's reliance on the information concerning the GE facility as "data which is to a critical degree secret and completely beyond scrutiny or verification." GM further stated that this information was the USEPA's sole basis for its proposal. GM added, however, that if the USEPA decides to promulgate the 3.5 lb/gallon limits, then it should adopt the proposed compliance date of one year from promulgation date. GM stated that this was the "minimum period which can reasonably be provided for compliance." In response to these comments, the USEPA maintains that its reliance on the GE data is entirely appropriate. The data relied upon by the USEPA, and available in the August 1991 RACT analysis for this rule (which is included in the rulemaking docket), include "Specification and Properties" sheets that indicate coating type and use, and the maximum applied VOC content at the GE facilities (3.5 lb/gal. for all primers, topcoats and final repair coats). Information in the RACT analysis also shows that those coatings are required to pass GE's tests for adhesion, gloss, color and other critical properties. While the suppliers of the complying coatings used by GE are not identified (because of claims of business confidentiality asserted by GE), the availability of these coatings is clearly established.

Although the GE data is compelling, the USEPA also rejects GM's claim that this was the USEPA's sole basis of its proposal. The July 17, 1992 rulemaking notice also cites the following factors as support: (1) The CTG for miscellaneous metal parts specifies a VOC limit of 3.5 lb/gal. as a presumptive RACT level, (2) the USEPA Region III issued a SIP deficiency letter to Pennsylvania finding that its 4.3 lb/gal. limit for locomotive coatings was deficient, and needed to be changed to 3.5 lb/gal., (3) Pennsylvania has lowered its locomotive and heavy-duty truck topcoat limit to 3.5 lb/gal. based on a finding that such coatings are available to the industries involved; and (4) GM did not adequately support its technical arguments.

Final Rulemaking Action

The USEPA has reviewed GM's comments, as well as the information identified in the July 17, 1992 proposed rule, and determined that the proposed emission limits of 3.5 lb/gal. for EMD's topcoat and final repair coating operations constitute RACT. As stated in the USEPA's proposed rule, compliance with these limits is required no later than one year from the date of today's promulgation. Also as proposed, the USEPA is withdrawing the May 31, 1991, stay pending reconsideration.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, the USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdictions over populations of less than 50,000.

[1] GM also filed a petition for review of the Agency's June 29, 1990, action in the United States Court of Appeals for the Seventh Circuit. *General Motors Corporation* v. *EPA*, No. 90–2889. That action has been held in abeyance by the Court, pending USEPA action on GM's petition for reconsideration.

[2] In its petition for reconsideration, GM also requested that the USEPA reconsider the rules applicable to EMD's silicone rubber priming and electrical insulating varnish operations. These two issues are not being addressed in this rulemaking action.

This action involves only one source, EMD. EMD is not a small entity. Therefore, the USEPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities.

Under Executive Order 12866, this action is not "Major." It has been submitted to the Office of Management and Budget for review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Dated: March 17, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.741 is amended by revising paragraphs (e)(5) and (z)(1) and adding paragraph (e)(7) to read as follows:

§ 52.741 Control strategy: Ozone control measures for Cook, DuPage, Kane, Lake, McHenry and Will Counties.

* * * * *

(e) * * *

(5) *Compliance schedule.* Except as specified in paragraph (e)(7) of this section, every owner or operator of a coating line (of a type included within paragraph (e)(1)(i) of this section) shall comply with the requirements of paragraph (e)(1),(e)(2) or (e)(3) of this section and paragraph (e)(6) of this section in accordance with the appropriate compliance schedule as specified in paragraph (e)(5)(i),(ii),(iii) or (iv) of this section.

(i) No owner or operator of a coating line which is exempt from the limitations of paragraph (e)(1) of this section because of the criteria in paragraph (e)(3)(i) of this section shall operate said coating line on or after July 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraph (e)(6)(i) of this section. Wood furniture coating lines are not subject to paragraph (e)(6)(i) of this section.

(ii) No owner or operator of a coating line complying by means of paragraph (e)(1)(i) of this section shall operate said coating line on or after July 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraphs (e)(1)(i) and (e)(6)(ii) of this section.

(iii) No owner or operator of a coating line complying by means of paragraph (e)(1)(ii) of this section shall operate said coating line on or after July 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraphs (e)(1)(ii) and (e)(6)(iii) of this section.

(iv) No owner or operator of a coating line complying by means of paragraph (e)(2) of this section shall operate said coating line on or after July 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraphs (e)(2) and (e)(6)(iv) of this section.

* * * * *

(7) *Compliance schedule for diesel electric locomotive coatings.* Notwithstanding any other provision of this subpart, the compliance date for the emission limitations and standards for "topcoat" and "final repair coat" operations only as applied to General Motors Corporation at their diesel electric locomotive coating lines in Cook County, Illinois, codified at 40 CFR 52.741(e)(1)(i)(M) (*2*) and (*3*) is specified in this paragraph (e)(7). Compliance with the requirements of paragraph (e)(1), (e)(2) or (e)(3) of this section and paragraph (e)(6) of this section must be in accordance with the appropriate compliance schedule as specified in paragraph (e)(7)(i),(ii),(iii), or (iv) of this section.

(i) No owner or operator of a coating line which is exempt from the limitations of paragraph (e)(1) of this section because of the criteria in paragraph (e)(3)(i) of this section shall operate said coating line on or after March 25, 1995, unless the owner or operator has complied with, and continues to comply with, paragraph (e)(6)(i) of this section.

(ii) No owner or operator of a coating line complying by means of paragraph (e)(1)(i) of this section shall operate said coating line on or after March 25, 1995, unless the owner or operator has complied with, and continues to comply with, paragraph (e)(1)(i) and (e)(6)(ii) of this section.

(iii) No owner or operator of a coating line complying by means of paragraph (e)(1)(ii) of this section shall operate said coating line on or after March 25, 1995, unless the owner or operator has complied with, and continues to comply with, paragraphs (e)(1)(ii) and (e)(6)(iii) of this section.

(iv) No owner or operator of a coating line complying by means of paragraph (e)(2) of this section shall operate said coating line on or after March 25, 1995, unless the owner or operator has complied with, and continues to comply with, paragraphs (e)(2) and (e)(6)(iv) of this section.

* * * * *

(z) *Rules stayed.* Not withstanding any other provision of this subpart, the effectiveness of the following rules is stayed as indicated below.

(1) The following rules are stayed from July 1, 1991, until USEPA completes its reconsideration as indicated: (i) 40 CFR 52.741 (u) and (v), including 40 CFR 52.741 (u)(4) and (v)(4) only as applied to Viskase Corporation's cellulose food casing manufacturing facility in Bedford Park, Illinois; and (ii) 40 CFR 54.741(u), including 40 CFR 52.741(u)(4), only as applied to Allsteel, Incorporated's adhesive lines at its metal furniture manufacturing operations in Kane County, Illinois.

* * * * *

[FR Doc. 94–7057 Filed 3–24–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[LA–9–1–5734; FRL–4840–4]

Approval and Promulgation of Implementation Plans; Louisiana Stage II Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is taking action to approve the Louisiana Stage II State Implementation Plan (SIP), which includes a SIP Supplement dated November 15, 1992, and State regulations (title 33, chapter 21. Control of Emission of Organic Compounds, section 2132. Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities, and section 6523. Fee Schedule Listing), as a revision to the Louisiana SIP for ozone. On November 10, 1992, Louisiana submitted a SIP revision request to the EPA to satisfy the requirement of section 182(b)(3) of the Clean Air Act Amendments (CAAA) of 1990. This SIP revision requires owners and operators of gasoline dispensing facilities to install and operate Stage II vapor recovery equipment in the Louisiana ozone nonattainment areas classified as moderate or worse. This revision applies to the Louisiana parishes of Ascension, East Baton Rouge, West Baton Rouge, Iberville, Livingston, and Pointe Coupee.

DATES: This final rule will be effective May 24, 1994, unless notice is received by April 25, 1994, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register (FR).

ADDRESSES: Comments should be sent to James F. Davis at USEPA, Region 6 (6T–AP), 1445 Ross Avenue, suite 1200, Dallas, Texas 75202–2733. The State submittal and the technical support document (TSD) are available for public review at the above address and at the Louisiana Department of Environmental Quality, H.B. Garlock Building, 7290 Bluebonnet, Baton Rouge, Louisiana 70810. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: James F. Davis at (214) 655–7584. A copy of today's revision to the Louisiana SIP is also available for inspection at: Air Docket 6102, US Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Under section 182(b)(3) of the CAAA, the EPA was required to issue guidance as to the effectiveness of Stage II systems. The EPA issued technical guidance in November 1991 and enforcement guidance in December 1991 to meet this requirement.[1] In addition, on April 16, 1992, the EPA published the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (General Preamble) (57 FR 13498). The guidance documents and the General Preamble interpret the Stage II statutory requirement and indicate what the EPA believes a State submittal needs to include to meet that requirement.

The EPA has designated the Baton Rouge and Lake Charles areas as ozone nonattainment in the State of Louisiana. The Baton Rouge nonattainment area is classified as serious and contains the following six parishes: Ascension, East Baton Rouge, West Baton Rouge, Iberville, Livingston, and Pointe Coupee. The Lake Charles ozone nonattainment area is classified as marginal and therefore is not required to implement a Stage II program. The designations for ozone were published in the FR on November 6, 1991, and November 30, 1992, and have been codified in the Code of Federal Regulations (CFR). See 56 FR 56694 (November 6, 1991) and 57 FR 56762 (November 30, 1992), codified at 40 CFR 81.300 through 81.437. Under section 182(b)(3) of the CAAA, Louisiana was required to submit Stage II vapor recovery rules for the Baton Rouge nonattainment area by November 15, 1992. On November 10, 1992, Governor Edwin W. Edwards submitted to the EPA, Stage II vapor recovery rules and a SIP Supplement dated November 15, 1992, which were adopted by the State on November 10, 1992, and were published in the Louisiana Register on November 20, 1992. By today's action, the EPA is approving this submittal. The EPA has reviewed the State submittal against the statutory requirements and for consistency with EPA guidance. A summary of the EPA's analysis is provided below. In addition, a more detailed analysis of the State submittal is contained in a TSD, dated September 24, 1993, which is available from the EPA Region 6 Office, listed above.

Applicability

Under section 182(b)(3) of the CAAA, States were required by November 15, 1992, to adopt regulations requiring owners or operators of gasoline dispensing systems to install and operate vapor recovery equipment at their facilities. The CAAA specifies that these State rules must apply to any facility that dispenses more than 10,000 gallons of gasoline per month or, in the case of an independent small business marketer, any facility that dispenses more than 50,000 gallons of gasoline per month. Section 324 of the CAAA defines an independent small business marketer, which is fully set forth in the TSD. The State has adopted the statutory definition of independent small business marketer in its regulations.

The State has adopted a general applicability requirement of 10,000 gallons per month. The State has also chosen to exempt independent small business marketers dispensing under 50,000 gallons per month.

As more fully discussed in the EPA's Enforcement Guidance and the General Preamble (57 FR 13514), the State has provided that the gallons of gasoline dispensed per month will be based on the average gasoline throughput for the most recent two year period without facility shutdown, and calculated monthly. If two year data is not available, the calculation is based on the monthly average for the most recent 12 calendar months (including only those months for which the facility was operating). The EPA finds the applicability requirements in the Louisiana Stage II rule to be acceptable.

Implementation of Stage II

The CAAA specifies the time by which certain facilities must comply with the State regulation. For facilities that are not owned or operated by an independent small business marketer, these times, calculated from the time of State adoption of the regulation, are: (1) Six months for facilities for which construction began after November 15, 1990; (2) one year for facilities that dispense at least 100,000 gallons of gasoline per month; and (3) two years for all other facilities. The Louisiana Stage II rule time schedule sets a compliance schedule of six months after State rule promulgation, one year after State rule promulgation, and two years after State rule promulgation, respectively for the above three deadlines. For independent small business marketers, section 324(a) of the CAAA provides that the time periods may be: (1) 33 percent of the facilities owned by an independent small business marketer by the end of the first year after the regulations take effect; (2) 66 percent of such facilities by the end of the second year; and (3) 100 percent of such facilities after the third year. Although Louisiana promulgated its Stage II regulations on November 20, 1992, five days after the SIP was required to be submitted, the EPA believes it is appropriate to accept the State's compliance schedule.

The EPA is approving the submitted time table for the following reasons. First, the CAAA states that the adoption date must be used to calculate the compliance schedule for Stage II implementation at facilities. In this case, the EPA accepts Louisiana's approach of triggering compliance dates from the date when the regulations were promulgated. The compliance deadlines triggered by this date begin only five days after the time schedule specified by the CAAA. The EPA considers an additional five days to be of minimal impact and will have no adverse impact on the integrity of the program. Also, the timetable initiation date established by the State on November 20, 1992, began shortly after adoption of the regulations. Secondly, remedying this deficiency by amending the compliance schedule would cause further delay in the implementation of Stage II in Louisiana, in that a State revision to the Stage II rule could establish a new and later adoption date and hence later compliance deadlines. Lastly, the Louisiana rule otherwise fulfills the Stage II requirements, and the EPA believes it will provide substantial air

[1] These two documents are entitled "Technical Guidance—Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities" (EPA–450/3–91–022) and "Enforcement Guidance for Stage II Vehicle Refueling Control Programs."

quality benefits to the regulated area. Therefore, the EPA believes it is in the public interest to approve and make enforceable this requirement at the earliest time feasible.

Additional Program Requirements

The State requires that Stage II systems be tested and certified to meet a 95 percent emission reduction efficiency. The EPA has indicated three acceptable methods of demonstrating a 95 percent emission reduction efficiency: (1) A method tested and approved by the California Air Resources Board (CARB); (2) a testing program that is equivalent to the CARB program, that will be conducted by the Program Oversight Agency (POA), or by a third party recognized by the POA, and submitted and approved by the EPA for incorporation into the SIP; or (3) a system approved by the CARB. The State has chosen to use a system approved by the CARB, or an equivalent certification authority approved by the administrative authority*. The State regulations define the administrative authority* to include both the State Department of Environmental Quality and the EPA. Thus, equivalent system certification authorities would have to be formally approved by the EPA and could be incorporated into the SIP.

The State requires sources to verify proper installation and function of Stage II equipment through use of a liquid blockage test and a leak test prior to system operation and every five years or upon major modification of a facility's Stage II equipment (i.e., 75 percent or more Stage II equipment change).

With respect to recordkeeping, the State has adopted those items recommended in the EPA's guidance and specifies that sources subject to Stage II must make the following documents available upon request: (1) Application approval records and station operating license; (2) system installation and testing results; (3) equipment maintenance and compliance records; (4) training certification files; and (5) inspection records. In addition, the State has committed in its SIP supplement to maintain general station and enforcement files, including information such as facility name, address, phone number, owner/operator names, a State assigned reference number, date of initial compliance with the regulations, number of pumps, monthly gasoline throughput, and State enforcement actions. The State has also established an inspection function consistent with that described in the EPA's guidance. The State commits to conducting inspections of facilities including a visual inspection of the Stage II equipment and of the required records and a functional test of the Stage II equipment. According to the Supplement, the State shall inspect each facility at least one time per year. Finally, the State has established procedures for enforcing violations of the Stage II requirements. Civil penalties may be assessed of up to $25,000 per day per violation. The EPA finds the State's program for implementation and enforcement of the Stage II program to be consistent with the EPA guidelines.

Rulemaking Action

Since the EPA finds that the State has adopted a Stage II SIP in accordance with section 182(b)(3) of the CAAA, as interpreted in the EPA's guidance, the EPA is giving notice of its intent to approve the submittal as a direct final action meeting the requirements of section 182(b)(3).

The EPA is publishing this action without prior proposal because the EPA views this as a noncontroversial revision and anticipates no adverse comments. This action will become effective May 24, 1994, unless by April 25, 1994 notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent documents. One document will withdraw the final action, and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective May 24, 1994.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered in light of specific technical, economical, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

This action has been classified as a table two action by the Regional Administrator under the procedures published in the FR on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived table two and table three SIP revisions from the requirements of section three of Executive Order 12291 for a period of two years (54 FR 2222). The EPA has submitted a request for a permanent waiver for table two and table three SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on the EPA's request. This request is still applicable under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note—Incorporation by reference of the SIP for the State of Louisiana was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 4, 1994.

Jane N. Saginaw,

Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The athority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart T—Louisiana

2. § 52.970 is amended by adding paragraph (c)(61) to read as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

(61) A revision to the Louisiana SIP to include revisions to LAC, Title 33,

"Environmental Quality," Part III. Air, Chapter 21, Control of Emission of Organic Compounds, Section 2132—Stage II Vapor Recovery Systems for Control of Vehicle Refuelling Emissions at Gasoline Dispensing Facilities effective November 20, 1992, and submitted by the Governor by cover letter dated November 10, 1992.

(i) Incorporation by reference.

(A) Revisions to LAC, Title 33, "Environmental Quality," Part III. Air, Chapter 21, Control of Emission of Organic Compounds, Section 2132—Stage II Vapor Recovery Systems for Control of Vehicle Refuelling Emissions at Gasoline Dispensing Facilities, effective November 20, 1992; and Chapter 65, Section 6523—Fee Schedule Listing, effective November 20, 1992.

(ii) Additional materials.

(A) November 15, 1993, narrative plan addressing: legal authority, control strategy, compliance schedules, air quality surveillance, public notice, determination of regulated universe, Louisiana Department of Environmental Quality recordkeeping, facility recordkeeping, annual in-use above ground inspections, program penalties, training, and benefits.

[FR Doc. 94–7056 Filed 3–24–94; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Parts 712 and 716

[OPPTS–82041A; FRL–4768–2]

Preliminary Assessment Information and Health and Safety Data Reporting; Addition of Chemicals; Stay of Certain Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; stay.

SUMMARY: EPA is staying certain provisions of a final rule which was published in the **Federal Register** of December 27, 1993, adding chemical substances to two model information-gathering rules: The Toxics Substances Control Act (TSCA) Section 8(a) Preliminary Assessment Information Rule (PAIR) and the TSCA Section 8(d) Health and Safety Data Reporting Rule. EPA received correspondence requesting clarification of the chemical identities of certain propylene glycol ethers and esters and the removal of certain other propylene glycol ethers and esters from the reporting requirement. EPA is staying the final rule as it relates to chemical substances under the category propylene glycol ethers and esters in order to resolve these issues and determine those chemical substances on which reporting will be required.

DATES: This stay is effective March 25, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 545–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 27, 1993 (58 FR 68311), EPA added 24 chemical substances and two categories of substances to both the PAIR and the section 8(d) Health and Safety Data Reporting Rule. Any person believing section 8(a) or 8(d) reporting required by this rule to be unwarranted was given opportunity to provide EPA in detail the reasons for that belief.

EPA received correspondence from several chemical companies and the Chemical Manufacturers Association's (CMA) Propylene Glycol Ether Panel which raised questions concerning the appropriate identification of some chemicals listed under the category propylene glycol ethers and esters and requested that certain chemical substances in this category be removed from the rule. These substances were among those recommended for testing by the Interagency Testing Committee (ITC) and added to the section 4(e) Priority List in its 31st Report to the EPA Administrator. Pursuant to 40 CFR 712.30(c) and 716.105(b), EPA routinely adds substances to the TSCA 8(a) and 8(d) rules when the ITC adds substances to the section 4(e) Priority List.

To provide sufficient time for EPA and ITC member agencies to review these issues, EPA is staying the provisions of the final rule that relate to the category propylene glycol ethers and esters. EPA will announce, via notice in the **Federal Register**, the final reporting requirements for this category when the issues have been resolved.

List of Subjects in 40 CFR Parts 712 and 716

Environmental protection, Chemicals, Hazardous substances, Health and safety data, Recordkeeping and reporting requirements.

Dated: March 21, 1994.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR Chapter I is amended as follows:

PART 712—[AMENDED]

1. In part 712:

a. The authority citation for part 712 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

§ 712.30 [Amended]

b. Section 712.30(x) is amended by staying the "propylene glycol ethers and esters" category and all related dates.

PART 716—[AMENDED]

2. In part 716:

a. The authority citation for part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d).

§ 716.120 [Amended]

b. Section 716.120(d) is amended by staying the "propylene glycol ethers and esters" category and all related dates.

[FR Doc. 94–7093 Filed 3–24–94; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 99

[GEN Docket No. 90–314 and ET Docket No. 92–100; FCC 94–30]

Narrowband Personal Communications Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Memorandum Opinion and Order (*MO&O*) finalizes the spectrum allocation, service rules, and pioneer's preference decisions for the narrowband personal communications service (PCS). This action is taken in response to eight petitions for reconsideration and clarification of the First Report and Order (*R&O*). These rules are intended to foster introduction of this new service to the public, contribute to development of the national information infrastructure, and provide for ubiquitous wireless access to new voice and data services. Facilitating the introduction of these services will create new jobs and promote U.S. competitiveness in the global telecommunications market.

EFFECTIVE DATE: April 25, 1994.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, Office of Engineering and Technology, (202) 653–8114.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *MO&O* in GEN Docket No. 90–314 and ET Docket No. 92–100, adopted February 3, 1994, and released March 4, 1994. The

complete text of this *MO&O* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Synopsis of MO&O

1. In the *R&O*, 58 FR 42681 (August 11, 1993), the Commission defined PCS very broadly to encompass a wide variety of mobile and ancillary fixed communication services, which could provide services to individuals and business, and be integrated with a variety of competing networks. Narrowband PCS was defined as PCS services operating in the 901–902 MHz, 930–931 MHz and 940–941 MHz bands. Narrowband PCS services are expected to include advanced voice paging, two-way acknowledgment paging, data messaging, and both one-way and two-way messaging and facsimile. Three megahertz (MHz) of spectrum were allocated for narrowband PCS services; 2 MHz were made available for immediate licensing and 1 MHz remains to be addressed in the future. A channel plan was adopted based on 50 kHz-wide channels with 26 channels generally available to all interested parties. In addition, eight 12.5 kHz-wide (paging response) channels were made available only to existing paging licensees. Three different-sized PCS service areas were adopted: Nationwide, areas based on Major Trading Areas (MTAs), and areas based on Basic Trading Areas (BTAs). (MTAs and BTAs are defined in Rand McNally's 1992 Commercial Atlas & Marketing Guide at pages 38–39.) Eleven channels were made available on a nationwide basis; 13 channels were made available on a MTA basis; and 10 channels, including the 8 paging response channels, were made available on a BTA basis. Each entity was permitted to acquire up to three licenses per geographic area. Geographic-based construction requirements were adopted that required nationwide licensees to construct 250 base stations in 5 years and 500 base stations in 10 years; MTA licensees to construct 25 base stations or serve 25 percent of the MTA's geographic area in 5 years and to construct 50 base stations or serve 50 percent of the MTA's area in 10 years; and BTA licensees to construct 1 base station and initiate service in 1 year. In order for a base station to be counted toward the required number of base stations, the base station had to serve 3,000 square kilometers (km^2). Base stations that serve less than this area had to be aggregated to form an equivalent service area. Finally, in the *R&O* the Commission granted Mobile Telecommunication Technologies, Inc. (Mtel) a pioneer's preference for a nationwide 50 kHz-wide channel for developing and testing "multicarrier modulation" technology capable of transmitting a 24 kilobit per second simulcast signal in a single 50 kHz channel and for designing a system capable of providing a variety of new two-way services in a single 50 kHz channel. An additional 18 pioneer's preference requests were denied. On reconsideration, in the *MO&O* the Commission took the following action:

2. *Service definition.* PageMart, Inc. (PageMart) requested that traditional paging services be excluded from the new narrowband PCS spectrum, arguing that the Commission provided no safeguards to ensure that the spectrum would be used for advanced messaging and paging services. The Commission declined to amend the board definition of service adopted in the *R&O*, stating that it would not be desirable to limit the range of services and technologies that are allowed to use these frequencies and that the definition adopted in the *R&O* will allow the market to determine the mix of services and technologies that best meets the needs of the public.

3. *Channel plan.* PageMart requested that a greater variety in the size of channels be provided, arguing that the channel plan would limit efficient use of this spectrum, encourage warehousing and speculation, and inhibit development of services that require either smaller or larger channels. The Commission declined to amend the 50 kHz-based channel plan adopted in the *R&O*, stating that the services proposed in this docket would be best accommodated by its 50 kHz-based channel plan, with aggregation possibilities, as adopted.

4. *Service areas.* Paging Network, Inc. (PageNet) requested that larger local and regional service areas be provided, arguing that BTAs are technically unworkable, not representative of existing local paging systems, and not economically viable; and that MTAs pose technical difficulties and are not representative of existing regional services. The Commission responded that MTAs contain sufficient population and geographic area to support viable services and retained MTAs for service areas. However, the Commission revised its service areas to include five large regions in addition to BTAs, MTAs and nationwide. The Commission stated that the regions better reflect the technologies and business plans of the parties proposing to implement large regional systems. The new five large regions are based upon aggregations of MTAs, and each has approximately 20 percent of the nation's population. See § 99.102, *infra*. The Commission also amended the spectrum plan to accommodate the new regional service areas, as follows:

Service area	Channels available
Nationwide	3–50 kHz paired with 12.5 kHz. 5–50 kHz paired with 50 kHz. 3–50 kHz unpaired.
Regions	4–50 kHz paired with 12.5 kHz. 2–50 kHz paired with 50 kHz.
MTA	3–50 kHz paired with 12.5 kHz. 2–50 kHz paired with 50 kHz. 2–50 kHz unpaired.
BTA	2–50 kHz paired with 12.5 kHz.

In addition, the Commission amended the rules governing the paging response channels to provide that four channels will be available on an MTA basis and four on a BTA basis. The Commission stated that designating response channels at the MTA level as well as at the BTA level will make it easier for operators of wider area local and regional systems to upgrade and coordinate their paging operations.

5. *Multiple licenses.* PageMart requested that the limit on acquisition of multiple licenses be reconsidered, arguing that some licensees could hold 300 kHz (three 50 kHz paired channels) and that other licensees would be restricted to significantly less spectrum because each license is for a smaller channel. PageMart also requested that the Commission clarify that existing paging spectrum held by licensees not be counted toward the limit and that existing paging licensees be limited to two paging response channels per geographic area. In response, the Commission clarified that licensees are limited to a total of three licenses, excluding the response channels reserved for the upgrade of exiting paging systems and also excluding existing paging spectrum. Additionally, the Commission clarified application of the multiple ownership limits by defining narrowband PCS licensees as persons or entities with an ownership interest of five or more percent in an entity holding a narrowband PCS license. The Commission agreed with PageMart that the conditions for use of the paging response channels required clarification and thus specified that an

"existing" paging licensee means a paging licensee authorized under parts 22 or 90 as of June 24, 1993, that the existing paging licensee must operate at least one base station in the MTA or BTA for which it requests a response channel, and that the response channels may be used only for mobile-to-base transmissions. The Commission limited existing paging licensees to two response channels per geographic area, stating that this will allow an opportunity for existing paging licensees to provide acknowledgement and messaging capability.

6. *Construction requirement.* Mtel requested that a population-based construction requirement be adopted as an alternative to the geographic coverage standard, arguing that such a standard would emphasize service to the public. In related requests, PageMart and PageNet asked that the method for counting base stations that serve less than 3000 km² be clarified so that a licensee can be certain when it has satisfied its construction obligations. In response to these petitions, the Commission amended the construction requirements as follows. Nationwide narrowband PCS licensees shall construct base stations that provide coverage to a composite area of 750,000 square kilometers or serve 37.5 percent of the U.S. population within five years of initial license grant date; and, shall construct base stations that provide coverage to a composite area of 1,500,000 square kilometers or serve 75 percent of the U.S. population within ten years of initial license grant date. Regional narrowband PCS licensees shall construct base stations that provide coverage to a composite area of 150,000 square kilometers or serve 37.5 percent of the population of the service area within five years of initial license grant date; and, shall construct base stations that provide coverage to a composite area of 300,000 square kilometers or serve 75 percent of the service area population within ten years of initial license grant date. MTA narrowband PCS licensees shall construct base stations that provide coverage to a composite area of 75,000 square kilometers or 25 percent of the geographic area, or serve 37.5 percent of the population of the service area within five years of initial license grant date; and, shall construct base stations that provide coverage to a composite area of 150,000 square kilometers or 50 percent of the geographic are, or serve 75 percent of the population of the service area within ten years of initial license grant date. The Commission stated that these new coverage requirements eliminate the need to specify a specific number of stations and eliminate any previous ambiguity that may have occurred for base stations serving less than 3000 km². The Commission also stated that by including alternative population coverage requirements, it can better ensure that licensees provide new and better service to the public, that such service is implemented promptly, and that the spectrum is efficiently utilized. The BTA construction requirement was not amended.

7. *Pioneer's preference.* Pacific Bell, PageMart, and PageNet requested that Mtel be required to pay for its license, that Mtel be required to build the system it proposed, that Mtel not be granted a license before other applicants, and, that Mtel be granted a license for less than a nationwide service area. The Commission declined to require that Mtel pay for its license, stated that Mtel's license application will be processed in due course, and affirmed Mtel's pioneer grant for a nationwide channel. For the license that Mtel may receive as a pioneer, the Commission required Mtel to build a system that substantially uses the design and technologies upon which its preference award was based and to hold its license for at least three years or until the five-year construction benchmark is met, whichever occurs first.

8. Additionally, Advanced Cordless Technologies, Inc. (ACT), Echo Group L.P. (Echo), Freeman Engineering Associates, Inc. (Freeman), and Global Enhanced Messaging Venture (Global) requested reconsideration of the denial of their pioneer's preference requests. ACT's petition was dismissed as untimely filed. Echo's petition was denied because: (1) The two-way data service it proposed was initially designed for implementation in services in which its use already is authorized; (2) Echo did not demonstrate how its proposal differs from existing or proposed two-way data services on cellular or land mobile frequencies; (3) Echo did not demonstrate with specificity the developments for which it is responsible; and (4) Echo did not explain how it derives its cost figures. Freeman's petition was denied because its system is incompatible with the licensing rules. Global's petition was denied because its system does not qualify as innovative under the Commission's rules.

9. Accordingly, it is ordered that part 99 of the Commission's rules is amended as specified below, effective April 25, 1994.

10. It is further ordered that the petitions for clarification or reconsideration filed by Mobile Telecommunication Technologies, Inc., Paging Network, Inc., and PageMart, Inc. are granted in part as discussed *supra* and ARE DENIED in all other respects.

11. It is further ordered that the petitions for reconsideration filed by Echo Group L.P., Freeman Engineering Associates, Inc., and Global Enhanced Messaging Venture ARE DENIED and that the petition for reconsideration filed by Advanced Cordless Technologies, Inc. is dismissed.

12. It is further ordered that the licensing bureau shall impose the following conditions on the license received by Mobile Telecommunication Technologies, Inc. (Mtel) pursuant to its pioneer's preference award: (1) Mtel shall be required to build a system that substantially uses the design and technologies upon which its preference award was based; and (2) Mtel must hold its license for three years or until the construction requirements applicable to the five-year build-out period specified in § 99.103 of the Commission's rules have been satisfied, whichever occurs first. It is further ordered that the petitions filed by Pacific Bell, Paging Network, Inc., and PageMart, Inc. addressing Mtel's pioneer's preference award are granted to this extent and, in all other respects, are denied.

13. This action is taken pursuant to sections 4(i), 7(a), 302, 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 302, 303(c), 303(f), 303(g), and 303(r).

List of Subjects in 47 CFR Part 99

Personal communications service, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Part 99 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 99—PERSONAL COMMUNICATIONS SERVICES

1. The authority citation in part 99 is revised to read as follows:

Authority: Secs. 4, 301, 302, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 301, 302, 303, and 332, unless otherwise noted.

§ 99.13 [Amended]

2. Section 99.13 is removed.

3. Section 99.101 is added to read as follows:

§ 99.101 Multiple ownership restrictions.

Narrowband PCS licensees shall not have an ownership interest in more than three of the 26 channels listed in § 99.129 in any geographic area. For the purpose of this restriction, a narrowband PCS licensee is any person or entity with an ownership interest of five or more percent in an entity holding a narrowband PCS license.

4. Section 99.102 is revised to read as follows:

§ 99.102 Service areas.

Narrowband PCS service areas are nationwide, regional, Major Trading Areas (MTAs) and Basic Trading Areas (BTAs) as defined below. MTAs and BTAs are based on the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pages 38–39 ("BTA/MTA Map"). Rand McNally organizes the 50 States and the District of Columbia into 47 MTAs and 487 BTAs. The BTA/MTA Map is available for public inspection at the Office of Engineering and Technology's Technical Information Center, Room 7317, 2025 M Street, NW., Washington, DC.

(a) The nationwide service area consists of the fifty states, the District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and United States Virgin Islands.

(b) The regional service areas are defined as follows:

(1) Region 1 (Northeast): The Northeast Region consists of the following MTAs: Boston-Providence, Buffalo-Rochester, New York, Philadelphia, and Pittsburgh.

(2) Region 2 (South): The South Region consists of the following MTAs: Atlanta, Charlotte-Greensboro-Greenville-Raleigh, Jacksonville, Knoxville, Louisville-Lexington-Evansville, Nashville, Miami-Fort Lauderdale, Richmond-Norfolk, Tampa-St. Petersburg-Orlando, and Washington-Baltimore; and, Puerto Rico and United States Virgin Islands.

(3) Region 3 (Midwest): The Midwest Region consists of the following MTAs: Chicago, Cincinnati-Dayton, Cleveland, Columbus, Des Moines-Quad Cities, Detroit, Indianapolis, Milwaukee, Minneapolis-St. Paul, and Omaha.

(4) Region 4 (Central): The Central Region consists of the following MTAs: Birmingham, Dallas-Fort Worth, Denver, El Paso-Albuquerque, Houston, Kansas City, Little Rock, Memphis-Jackson, New Orleans-Baton Rouge, Oklahoma City, San Antonio, St. Louis, Tulsa, and Wichita.

(5) Region 5 (West): The West Region consists of the following MTAs: Honolulu, Los Angeles-San Diego, Phoenix, Portland, Salt Lake City, San Francisco-Oakland-San Jose, Seattle (including Alaska), and Spokane-Billings; and, American Samoa, Guam, and the Northern Mariana Islands.

(c) The MTA service areas are based on the Rand McNally *1992 Commercial Atlas & Marketing Guide*, 123rd Edition, at pages 38–39, with the following exceptions and additions:

(1) Alaska is separated from the Seattle MTA and is licensed separately.

(2) Guam and the Northern Mariana Islands are licensed as a single MTA-like area.

(3) Puerto Rico and the United States Virgin Islands are licensed as a single MTA-like area.

(4) American Samoa is licensed as a single MTA-like area.

(d) The BTA service areas are based on the Rand McNally *1992 Commercial Atlas & Marketing Guide*, 123rd Edition, at pages 38–39, with the following additions: American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the United States Virgin Islands are licensed separately as BTA-like areas.

5. Section 99.103 is revised to read as follows:

§ 99.103 Construction requirements.

(a) Nationwide narrowband PCS licensees shall construct base stations that provide coverage to a composite area of 750,000 square kilometers or serve 37.5 percent of the U.S. population within five years of initial license grant date; and, shall construct base stations that provide coverage to a composite area of 1,500,000 square kilometers or serve 75 percent of the U.S. population within ten years of initial license grant date.

(b) Regional narrowband PCS licensees shall construct base stations that provide coverage to a composite area of 150,000 square kilometers or serve 37.5 percent of the population of the service area within five years of initial license grant date; and, shall construct base stations that provide coverage to a composite area of 300,000 square kilometers or serve 75 percent of the service area population within ten years of initial license grant date.

(c) MTA narrowband PCS licensees shall construct base stations that provide coverage to a composite area of 75,000 square kilometers or 25 percent of the geographic area, or serve 37.5 percent of the population of the service area within five years of initial license grant date; and, shall construct base stations that provide coverage to a composite area of 150,000 square kilometers or 50 percent of the geographic area, or serve 75 percent of the population of the service area within ten years of initial license grant date.

(d) BTA narrowband PCS licensees shall construct at least one base station and begin providing service in its BTA within one year of initial license grant date.

(e) In demonstrating compliance with the above construction requirements, licensees must base their calculations on signal field strengths that ensure reliable service for the technology utilized.

(1) For the purpose of this section, the service radius of a base station may be calculated using the following formula:

$$d_{km} = 2.53 \times h_m^{0.34} \times p^{0.17}$$

where d_{km} is the radial distance in kilometers,

h_m is the antenna HAAT of the base station in meters, and

p is the e.r.p. of the base station in watts.

(2) Alternatively, licensees may use any service radius contour formula developed or generally used by industry, provided that such formula is based on the technical characteristics of their system.

(f) Upon meeting the five and ten year benchmarks in paragraphs (a), (b) and (c) of this section, licensees shall file a map and other supporting documentation that demonstrates compliance with the geographic area or population coverage requirement. BTA licensees shall file a statement indicating commencement of service. The filing must be received at the Commission on or before expiration of the relevant period.

(g) If the sale of a license is approved, the new licensee is held to the original build-out requirement.

(h) Failure by a licensee to meet the above construction requirements shall result in forfeiture of the license and ineligibility to regain it.

Note: Population-based construction requirements contained in this section shall be based on the 1990 census.

6. Section 99.129 is added to read as follows:

§ 99.129 Frequencies.

The following frequencies are available for narrowband PCS.

(a) Eleven frequencies are available for assignment on a nationwide basis as follows:

(1) Five 50 kHz channels paired with 50 kHz channels:

Channel 1: 940.00–940.05 and 901.00–901.05 MHz;

Channel 2: 940.05–940.10 and 901.05–901.10 MHz;

Channel 3: 940.10–940.15 and 901.10–901.15 MHz;

Channel 4: 940.15–940.20 and 901.15–901.20 MHz; and,
Channel 5: 940.20–940.25 and 901.20–901.25 MHz.

(2) Three 50 kHz channels paired with 12.5 kHz channels:

Channel 6: 930.40–930.45 and 901.7500–901.7625 MHz;
Channel 7: 930.45–930.50 and 901.7625–901.7750 MHz; and,
Channel 8: 903.50–930.55 and 901.7750–901.7875 MHZ.

(3) Three 50 kHz unpaired channels:

Channel 9: 940.75–940.80 MHz;
Channel 10: 940.80–940.85 MHz; and,
Channel 11: 940.85–940.90 MHz.

(b) Six frequencies are available for assignment on a regional basis as follows:

(1) Two 50 kHz channels paired with 50 kHz channels:

Channel 12: 940.25–940.30 and 901.25–901.30 MHz; and,
Channel 13: 940.30–940.35 and 901.30–901.35 MHz.

(2) Four 50 kHz channels paired with 12.5 kHz channels:

Channel 14: 930.55–930.60 and 901.7875–901.8000 MHz;
Channel 15: 930.60–930.65 and 901.8000–901.8125 MHz;
Channel 16: 930.65–930.70 and 901.8125–901.8250 MHz; and,
Channel 17: 930.70–930.75 and 901.8250–901.8375 MHz.

(c) Seven frequencies are available for assignment on a MTA basis as follows:

(1) Two 50 kHz channels paired with 50 kHz channels:

Channel 18: 940.35–940.40 and 901.35–901.40 MHz; and,
Channel 19: 940.40–940.45 and 901.40–901.45 MHz.

(2) Three 50 kHz channels paired with 12.5 kHz channels:

Channel 20: 930.75–930.80 and 901.8375–901.8500 MHz;
Channel 21: 930.80–930.85 and 901.8500–901.8625 MHz; and,
Channel 22: 930.85–930.90 and 901.8625–901.8750 MHz.

(3) Two 50 kHz unpaired channels:

Channel 23: 940.90–940.95 MHz; and,
Channel 24: 940.95–941.00 MHz.

(d) Two 50 kHz channels paired with 12.5 kHz channels are available for assignment on a BTA basis:

Channel 25: 930.90–930.95 and 901.8750–901.8875 MHz; and,
Channel 26: 930.95–931.00 and 901.8875–901.9000 MHz.

7. Section 99.130 is revised to read as follows:

§ 99.130 Paging response channels.

(a) The channels listed in paragraphs (b) and (c) of this section are available to paging licensees licensed pursuant to parts 22 and 90 of this chapter as of June 24, 1993, and which operate at least one base station within the service area for which the licensee requests such a channel. These channels shall be used only in paired communications with existing paging channels to provide mobile-to-base station communications. Eligible paging licensees may hold licenses for a maximum of two of these channels within the same geographic area. These licenses are not counted toward the multiple ownership restrictions of § 99.101.

(b) The following four 12.5 kHz unpaired channels are available for assignment on a MTA basis:

901.9000–901.9125 MHz;
901.9125–901.9250 MHz;
901.9250–901.9375 MHz; and,
901.9375–901.9500 MHz.

(c) The following four 12.5 kHz unpaired channels are available for assignment on a BTA basis:

901.9500–901.9625 MHz;
901.9625–901.9750 MHz;
901.9750–901.9875 MHz; and,
901.9875–902.0000 MHz.

8. Section 99.133 is amended by revising paragraph (a)(1)(ii) to read as follows:

§ 99.133 Emission limits.

(a) * * *

(1) * * * .

(ii) On any frequency outside the authorized bandwidth and removed from the edge of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 40 kHz: at least 43+10 Log_{10} (P) decibels or 80 decibels, whichever is the lesser attenuation.

* * * * *

[FR Doc. 94–7038 Filed 3–24–94; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 24

RIN 1018–AB28

Endangered and Threatened Wildlife and Plants; Designated Ports for Listed Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (the Service) hereby amends the regulations concerning the importation, exportation, and reexportation of plants by adding the U.S. Department of Agriculture (USDA) ports at Mobile, AL, Savannah, GA, Baltimore, MD, Morehead City and Wilmington, NC, Philadelphia, PA, Charleston, SC, and Norfolk, VA, as designated ports for the importation of logs and lumber from trees that are listed as endangered or threatened under the Endangered Species Act of 1973, as amended (the Act), or listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The Service is also designating the USDA port at Wilmington, NC, as a port for the exportation of Venus flytrap (*Dionaea muscipula*) plants. The USDA has adequate facilities and personnel at these ports to qualify the ports as designated ports for the importation, exportation, and reexportation of plants under the terms of the Act and CITES. The addition of these ports to the list of designated ports will facilitate trade and the enforcement of the Act and CITES.

EFFECTIVE DATE: March 25, 1994.

FOR FURTHER INFORMATION CONTACT: Marshall P. Jones, Chief, Office of Management Authority, U.S. Fish and Wildlife Service, 1849 C Street, NW., (MS 420 C ARLSQ), Washington, DC 20240, telephone (703) 358–2095.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, as amended (the Act), requires, among other things, that plants be imported, exported, or reexported only at designated ports or, under certain limited circumstances, at nondesignated ports. Section 9(f) of the Act (16 U.S.C. 1538[f]) provides for the designation of ports. Under section 9(f)(1), the Secretary of the Interior (the Secretary) has the authority to establish designated ports based on a finding that such an action would facilitate enforcement of the Act and reduce the costs of that enforcement. The United States Department of Agriculture (USDA) and the Secretary are responsible for enforcing provisions of the Act and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) relating to the importation, exportation, and reexportation of plants listed as endangered or threatened under the Act or listed under CITES.

The regulations in 50 CFR part 24, "Importation and Exportation of Plants," are for the purpose of establishing ports for the importation, exportation, and reexportation of plants. Plants that are listed as endangered or threatened in 50 CFR 17.12 or in the appendices to CITES in 50 CFR 23.23 are required to be accompanied by documentation and may be imported, exported, or reexported only at one of

the USDA ports listed in section 24.12(a) of the regulations. Certain other USDA ports are designated for the importation, exportation, or reexportation of specific listed plants. Section 24.12(e) of the regulations contains a list of USDA ports that are, for the purposes of the Act and CITES, designated ports for the importation, exportation, and reexportation of plants that are not listed as endangered or threatened. (The USDA regulations in 7 CFR 319.37 contain additional prohibitions and restrictions governing the importation of plants through those ports.)

In a July 21, 1993, **Federal Register** notice (58 FR 39003), the United States Fish and Wildlife Service (Service) proposed that the USDA ports at Mobile, AL, Savannah, GA, Baltimore, MD, Morehead City and Wilmington, NC, Philadelphia, PA, Charleston, SC, and Norfolk, VA, be listed as designated ports for the importation of logs and lumber from trees that are listed as endangered or threatened under the Act or CITES. The Service further proposed to designate the port at Wilmington, NC, as a port for the exportation of Venus flytrap (*Dionaea muscipula*) plants. Finally, the Service acted to correct a typographical error in the regulations.

Comments Submitted

The Service's July 21, 1993, notice invited the submission of written comments regarding the proposal for a 60-day comment period ending on September 20, 1993. Four comments were received by that date, from a lumber company, a lumber trade association, a U.S. Senator, and a State port authority. All four commenters asked that Gulfport, MS, be added to the list of designated ports for the importation of logs and lumber from trees that are listed as endangered or threatened under the Act or CITES. In addition, one of the commenters asked that the ports at Portland, OR, and Vancouver, WA, also be added to that list.

The Service has consulted with the USDA regarding the addition of Gulfport, MS, Vancouver, WA, and Portland, OR, to the list of designated ports for the importation of logs and lumber from trees that are listed as endangered or threatened under the Act or CITES. Those consultations were necessary to determine whether the ports possess adequate facilities and personnel to carry out enforcement activities related to the Act and CITES. As a result of those consultations, the Service believes that Gulfport, MS, Vancouver, WA, and Portland, OR, could be added to the list of designated ports for the importation of logs and lumber from trees that are listed as endangered or threatened under the Act or listed under CITES. However, because they were not listed in the July 21, 1993, proposed rule, Gulfport, MS, Vancouver, WA, and Portland, OR, cannot be added to the list of designated ports in this final rule. Therefore, the Service intends to include those three ports in a new proposed rule for publication in the **Federal Register**.

In this final rule, the Service has changed the order in which the ports are listed in new paragraph (e) of section 24.12. The ports are now listed in alphabetical order, by State, in order to simplify any future amendments to the paragraph.

Requests for Public Hearing

Section 9(f)(1) of the Act provides that any person may request an opportunity to comment at a public hearing before the Secretary of the Interior confers designated port status on any port. Accordingly, the Service's July 21, 1993, notice invited public hearing requests, which were required to be received by the Service on or before September 3, 1993. No such requests were received.

Treasury Department Approval to Designate Proposed Ports

Section 9(f)(1) of the Act also provides, in part that:

"For the purpose of facilitating enforcement of this chapter and reducing costs thereof, the Secretary of the Interior, with approval of the Secretary of the Treasury and after notice and opportunity for public hearing, may, by regulation, designate ports and change such designations."

Approval from the Secretary of the Treasury was obtained in accordance with these provisions.

Therefore, based on the rationale set forth in the proposed rule and in this document, the Service is adopting the provisions of the proposal as a final rule with the changes discussed in this document.

Effective Date

The effect of this rule is to grant an exemption from 16 U.S.C. 1538(f), which generally prohibits importation of wildlife and plants except at such ports as may be designated. Accordingly, it may be given immediate effect under 5 U.S.C. 553(d)(1), which permits a rule that "grants or recognizes an exemption or relieves a restriction" to be given immediate effect.

Executive Order 12866 and Regulatory Flexibility Act

This rule was not subject to Office of Management and Budget (OMB) review under Executive Order 12866.

The Service believes that establishing the USDA ports at Mobile, AL, Savannah, GA, Baltimore, MD, Morehead City and Wilmington, NC, Philadelphia, PA, Charleston, SC, and Norfolk, VA, as designated ports for the importation of logs and lumber from trees listed as endangered or threatened under the Act or listed under CITES will have a positive economic impact. These ports are major ports of entry for logs and lumber, but they had not been designated as ports for the importation of logs and lumber from listed trees. Before the effective date of this rule, importers wishing to import logs and lumber from listed trees into a port on the east coast of the United States could use only Hoboken, NJ, or Miami, FL, and importers wishing to import logs and lumber from listed trees into a U.S. port on the Gulf of Mexico could use only Brownsville and Houston, TX, and New Orleans, LA. Establishing Mobile, AL, Savannah, GA, Baltimore, MD, Morehead City and Wilmington, NC, Philadelphia, PA, Charleston, SC, and Norfolk, VA, as designated ports for the importation of logs and lumber from trees listed as endangered or threatened under the Act or listed under CITES will result in a savings in time and transportation costs for importers of logs and lumber.

The Service also believes that establishing Wilmington, NC, as a designated port for the exportation of Venus flytrap plants will have a positive economic impact. The Venus flytrap occurs chiefly in North Carolina and also in South Carolina. Before the inclusion of the Venus flytrap in appendix II of CITES became effective on June 11, 1992, exporters of the Venus flytrap had been able to use Wilmington, NC, and other USDA ports for the exportation of their plants. After June 11, 1992, however, those exporters were required to send their plants through ports designated for the importation, exportation, or reexportation of listed plants, with Miami, FL, and Hoboken, NJ, being the closest such ports to North Carolina and South Carolina. Establishing Wilmington, NC, as a designated port for the exportation of Venus flytrap will result in a savings in time and transportation costs for exporters of the plant.

Under these circumstances, the Service has determined that this action will not have a significant economic

effect on a substantial number of small entities, as described in the Regulatory Flexibility Act (5 U.S.C. 601).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. The Office of the Solicitor has determined that the requirements of Executive Order 12778 have been satisfied.

National Environmental Policy Act

The Service has determined that this final rule adding designated ports under authority of the Endangered Species Act of 1973 for the importation and exportation of plants is not a major Federal action which will significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 50 CFR Part 24

Endangered and threatened species, Exports, Harbors, Imports and plants.

Accordingly, we are amending 50 CFR part 24 as follows:

PART 24—IMPORTATION AND EXPORTATION OF PLANTS

1. The authority citation for part 24 continues to read as follows:

Authority: Secs. 9(f)(1), 11(f), Pub. L. 93–205, 87 Stat. 893, 897 (16 U.S.C. 1538(f)(1), 1540(f)).

2. In § 24.12, paragraph (e) is redesignated as paragraph (g), and two new paragraphs, (e) and (f), are added to read as follows:

§ 24.12 Designated ports.

* * * * *

(e) The U.S. Department of Agriculture ports at Mobile, Alabama; Savannah, Georgia; Baltimore, Maryland; Wilmington and Morehead City, North Carolina; Philadelphia, Pennsylvania; Charleston, South Carolina; and Norfolk, Virginia, are designated ports for the importation of logs and lumber from trees which are listed in the appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) or in 50 CFR 17.12 or 23.23 and which are required to be accompanied by documentation under 50 CFR part 17 or 23.

(f) The U.S. Department of Agriculture port at Wilmington, North Carolina, is a designated port for the exportation of plants of the species *Dionaea muscipula* (Venus flytrap), which is listed in appendix II to CITES and which is required to be accompanied by documentation under 50 CFR part 23.

* * * * *

§ 24.12 [Amended]

3. In § 24.12, in newly redesignated paragraph (g), the list of U.S. Department of Agriculture ports is amended by removing the words "San Antonia, Texas" and adding the words "San Antonio, Texas".

Dated: February 26, 1994.

George T. Frampton,

Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 94–6931 Filed 3–24–94; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 930652-4028; I.D. 012694E]

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to reduce the proportion of pollock roe that may be retained onboard a vessel during a fishing trip in the Alaska groundfish fisheries. This action is necessary to implement a statutory prohibition against the wasteful use of pollock by stripping roe (eggs) from female pollock and discarding female and male pollock carcasses without further processing, commonly known as pollock roe stripping, and to promote the goals and objectives of the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska and the FMP for the Groundfish Fisheries of the Bering Sea and Aleutian Islands Area with respect to groundfish management off Alaska.

DATES: This rule is effective April 25, 1994.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) may be obtained from the Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802 (Attn: Lori Gravel).

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, Chief, Fisheries Management Division, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Fishing for groundfish by U.S. vessels in the exclusive economic zone of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands area (BSAI) is managed by the Secretary of Commerce (Secretary) under the FMPs for Groundfish of the GOA and for the Groundfish Fisheries of the BSAI. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR parts 672 and 675. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620.

This action reduces the proportion of pollock roe that may be retained onboard a vessel relative to other pollock products on board the vessel during a fishing trip from 10 to 7 percent. A reduction in the proportion of pollock roe that may be retained is one of several measures contained in a proposed rule, which invited comment through September 23, 1993 (58 FR 44643, August 24, 1993). The measure proposed at that time would have reduced the retainable roe proportion specified in the regulations from 10 percent to 5 percent. Seven letters of comments were received that addressed the retainable pollock roe proportion. They are summarized and responded to in the *Comments Received* section of this preamble.

Other measures contained in the proposed rule published on August 24, 1993, would establish standard product types and recovery rates for groundfish products. Those measures are still under review by NMFS and will be covered in a separate final rule.

Changes From the Proposed Rule

The proposed rule would have amended §§ 672.20(i) and 675.20(j) of title 50 CFR to specify 0.05, rather than

0.10, as the allowable ratio of pollock roe to the round weight equivalents of other pollock products that may be onboard a vessel during a trip. NMFS has determined that the current 10 percent proportion of roe that is allowed to be retained when harvesting pollock is too high, given actual proportions that resulted during the 1991, 1992, and 1993 pollock fisheries in the BSAI, and that it should be reduced to 7 percent rather than to 5 percent as proposed. Under a roe retention rate of 10 percent, processors could "top off" with amounts of pollock roe by stripping roe from subsequent pollock catches and discarding the carcasses.

Actual amounts of roe produced during the 1992 and 1993 pollock roe seasons show that processors typically produced pollock roe as an ancillary product as intended by the BSAI FMP. Roe production resulted in an overall proportion of less than 4 percent of pollock primary products. However, NMFS recognizes that this proportion represents an overall average proportion. Although NMFS acknowledges variation in pollock production throughout a season, individual processors may achieve higher proportions by topping off retained amounts of pollock round-weight equivalents with additional pollock roe. To allow too high a proportion could encourage this "topping of" practice.

In determining that 7 percent should be the applicable limit, NMFS reviewed 1993 roe recovery information during the roe pollock fishing season, which was conducted between January 20 and April 15. These vessels were typically participating under Community Development Quotas during 1993 and achieved roe recoveries during a time when roe recovery was optimal. Data from 12 participating vessels, which produced 1,422 mt of pollock roe from 31,772 mt of retained pollock catch, show that the average roe recovery was 0.045 during the roe pollock fishing season. The highest average roe proportion achieved by any one vessel participating under Community Development Quotas was 0.072. The lowest proportion achieved by one of the 12 vessels was 0.020. An allowable proportion of 0.07 (rounded to the nearest 100th) would minimize amounts of roe that might be discarded as a result of regulations, while still complying with the intent of the Magnuson Act to prohibit roe stripping. Therefore, NMFS is implementing 0.07 as the allowable proportion of roe as measured against other pollock products rather than 0.05 as proposed.

Response to Comments

This action responds to concerns expressed in public testimony that the previously allowed retainable roe proportion of 10 percent does not successfully prohibit roe stripping. No additional comments to that effect were received during the comment period provided by the proposed rule. Seven comments were received from industry participants, primarily expressing concern that the proposed reduction to 5 percent would result in unnecessary economic loss to the industry.

Comment 1: The proposed reduction from 0.10 to 0.05 of allowable pollock roe that may be retained is too low and will result in substantial economic loss. Average roe recoveries have been substantially lower than 0.10, which means that the average vessel is not topping off its retained pollock production with pollock roe. The average vessel, therefore, is not stripping pollock roe, and the reduction is not necessary.

Response: NMFS has decided to reduce the limit to 7 percent rather than 5 percent. Seven percent is the highest average roe proportion achieved by any one vessel for which NMFS has records during the 1993 directed fishery for roe-bearing pollock. NMFS does not concur that substantial economic loss will result. Maintaining the existing 10 percent limit could encourage roe stripping when the average recovery is substantially less. This would be inconsistent with the Magnuson Act, which prohibits roe stripping.

Comment 2: The proposed reduction in the amount of retainable pollock roe will discriminate against the offshore fleet.

Response: When the Council developed Amendments 14 and 19 to the FMPs for the BSAI and GOA, it considered several options for implementing the Magnuson Act's ban on roe stripping. The Council's recommended alternative was based, in part, on the fact that the agency's ability to regulate on shore processing is limited under the Magnuson Act. Shorebased processing facilities may be subject to a State of Alaska policy that pollock roe stripping be eliminated to the fullest extent possible (AS 16.10.164).

Classification

The Assistant Administrator for Fisheries, NOAA (AA) has determined that this rule is necessary to promote compliance with the Magnuson Act prohibition of stripping pollock of its roe and discarding the flesh of the pollock (16 U.S.C. 1857(1)(N)).

The Alaska Region, NMFS, prepared a final regulatory flexibility analysis as part of the EA/RIR/FRFA prepared for final rulemaking, which concludes that this rule will have significant effects on a substantial number of small entities. The FRFA concludes that reducing the allowable proportion to 0.07 for retained pollock roe is superior to the *status quo* alternative in which the allowable proportion is 0.10. In 1992, actual roe recovery rates achieved by shore-based and at-sea processors were 0.037 and 0.034, respectively. In 1993, the actual roe recovery rate achieved by shorebased processors was 0.026. Some at-sea processors achieved roe recoveries of 0.072 during a time when roe maturation was likely optimum. The recovery rate of 0.07 is not expected to be constraining and will better achieve the intent of the Council and the Magnuson Act to prohibit pollock roe stripping. A copy of the EA/RIR/FRFA may be obtained from NMFS (see **ADDRESSES**).

This rule is not subject to review under E.O. 12866.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: March 21, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.20, paragraphs (i)(1) and (i)(6) are revised to read as follows:

§ 672.20 General limitations.

* * * * *

(i) * * *

(1) For purposes of this paragraph (i), pollock roe means product comprised of pollock eggs, either loose or in sacs or skeins. Pollock roe retained onboard a vessel at any time during a fishing trip must not exceed 7 percent of the total round-weight equivalent of pollock, as calculated from the primary pollock product onboard the vessel during the same fishing trip as defined in this paragraph (i). Determinations of allowable retention of pollock roe will be based on amounts of pollock harvested, received, or processed during a single fishing trip. Pollock or pollock

products from previous fishing trips that are retained onboard a vessel may not be used to determine the allowable retention of pollock roe for that vessel.

* * * * *

(6) *Calculation of the amount of retainable pollock roe.* To calculate the amount of pollock roe that can be retained onboard during a fishing trip, first calculate the round-weight equivalent by dividing the total amount of primary product onboard by the appropriate product-recovery rate. To determine the amount of pollock roe that can be retained during the same fishing trip, multiply the round-weight equivalent by 0.07. The result is the maximum amount of pollock roe that can be retained onboard during that fishing trip. Pollock roe retained onboard from previous fishing trips will not be counted, for purposes of this paragraph (i)(6). If two or more products, other than roe, are made from different fish, then round-weight equivalents are calculated separately for each product. Round-weight equivalents are then added together, and the sum multiplied by 0.07 to determine the maximum amount of pollock roe that can be retained onboard a vessel during a fishing trip. However, if two or more products, other than roe, are made from the same fish, then the maximum amount of pollock roe that can be retained during a fishing trip is determined from the primary product.

* * * * *

PART 675—GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

4. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

5. In § 675.20, paragraphs (j)(1) and (j)(6) are revised to read as follows:

§ 675.20 General limitations.

* * * * *

(j) *Allowable retention of pollock roe.* (1) For purposes of this paragraph (j), pollock roe means product comprised of pollock eggs, either loose or in sacs or skeins. Pollock roe retained onboard a vessel at any time during a fishing trip must not exceed 7 percent of the total round-weight equivalent of pollock, as calculated from the primary pollock product onboard the vessel during the same fishing trip as defined in this paragraph (j). Determinations of allowable retention of pollock roe will be based on amounts of pollock harvested, received, or processed during a single fishing trip. Pollock or pollock products from previous fishing trips that are retained onboard a vessel may not be used to determine the allowable retention of pollock roe for that vessel.

* * * * *

(6) *Calculation of the amount of retainable pollock roe.* To calculate the amount of pollock roe that can be retained onboard during a fishing trip, first calculate the round-weight equivalent by dividing the total amount of primary product onboard by the appropriate product recovery rate. To determine the amount of pollock roe that can be retained during the same fishing trip, multiply the round-weight equivalent by 0.07. The result is the maximum amount of pollock roe that can be retained onboard during that fishing trip. Pollock roe retained onboard from previous fishing trips will not be counted, for purposes of this paragraph (j)(6). If two or more products, other than roe, are made from different fish, then round-weight equivalents are calculated separately for each product. Round-weight equivalents are then added together, and the sum multiplied by 0.07 to determine the maximum amount of pollock roe that can be retained onboard a vessel during a fishing trip. However, if two or more products, other than roe, are made from the same fish, then the maximum amount of pollock roe that can be retained during a fishing trip is determined from the primary product.

* * * * *

[FR Doc. 94–7139 Filed 3–24–94; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 58
Friday, March 25, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[TB-94-01]

Tobacco Inspection—Growers Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of referendum.

SUMMARY: This notice announces that a referendum will be conducted by mail during the period of April 4 through April 8, 1994, for producers of flue-cured tobacco who sell their tobacco at auction in Windsor, Williamston, and Robersonville, North Carolina, to determine producer approval of the designation of the Windsor, Williamston, and Robersonville tobacco markets as one consolidated auction market.

DATES: The referendum will be held April 4 through April 8, 1994.

FOR FURTHER INFORMATION CONTACT: Larry L. Crabtree, Deputy Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, P.O. Box 96456, Washington, DC 20090-6456; telephone number (202) 205-0567.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a mail referendum on the designation of a consolidated auction market at Windsor, Williamston, and Robersonville, North Carolina. Williamston and Robersonville, North Carolina, were separately designated on August 16, 1941, and Windsor on June 16, 1950, (7 CFR 29.8001) as flue-cured tobacco auction markets under the Tobacco Inspection Act (7 U.S.C. 511 et seq.). Under this Act the three markets have been receiving mandatory grading services from USDA.

On October 14, 1993, an application was made to the Secretary of Agriculture to consolidate the designated markets of Windsor, Williamston, and Robersonville, North Carolina. The application, filed by warehouse operators in those markets, was made pursuant to the regulations promulgated under the Tobacco Inspection Act (7 CFR part 29.1-29.3). On November 9, 1993, a public hearing was held in Williamston, North Carolina, pursuant to the regulations. A Review Committee, established pursuant to § 29.3(h) of the regulations (7 CFR 29.3(h)), has reviewed and considered the application, the testimony presented at the hearing, the exhibits received in evidence, and other available information. The Committee recommended to the Secretary that the application be granted and the Secretary approved the application on March 18, 1994.

Before a new market can be officially designated, a referendum must be held to determine that a two-thirds majority of producers favor the designation. It is hereby determined that the referendum will be held by mail during the period of April 4 through April 8, 1994. The purpose of the referendum is to determine whether farmers who sold their tobacco on the designated markets at Windsor, Williamston, and Robersonville are in favor of, or opposed to, the designation of the consolidated market for the 1994 and succeeding crop years. Accordingly, if a two-thirds majority of those tobacco producers voting in the referendum favor this consolidation, a new market will be designated as and be called Windsor-Williamston-Robersonville.

To be eligible to vote in the referendum a tobacco producer must have sold flue-cured tobacco on either the Windsor, Williamston, or Robersonville, North Carolina, auction markets during the 1993 marketing season. Any farmer who believes he or she is eligible to vote in the referendum but has not received a mail ballot by April 4, 1994, should immediately contact Larry L. Crabtree at (202) 205-0235.

The referendum will be held in accordance with the provisions for referenda of the Tobacco Inspection Act, as amended (7 U.S.C. 511d) and the regulations for such referendum set forth in 7 CFR 29.74.

Dated: March 22, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94-7199 Filed 3-24-94; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-220-AD]

Airworthiness Directives; Lockheed Model 382 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Lockheed Model 382 series airplanes. This proposal would require a revision to the Airplane Flight Manual to require takeoff operation in accordance with revised performance data. This proposal is prompted by a report of a change that had been incorporated into the propeller governor of these airplanes during production, which altered the thrust decay characteristic of the propeller when operating in an engine failure scenario. The actions specified by the proposed AD are intended to ensure that the airplane is operated at sufficient speeds to mitigate the problems associated with a faster thrust decay and to prevent the airplane from departing the side of the runway.

DATES: Comments must be received by May 20, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-220-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Lockheed Western Export Company, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be

examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; telephone (404) 991–3915; fax (404) 991–3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–220–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–220–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

During recent flight testing of a Lockheed Model 382 series airplane, the airplane could not meet the ground minimum control speed (V_{mcg}) schedule as specified in the FAA-approved Airplane Flight Manual (AFM). Investigation revealed that, during production, a change had been incorporated into the propeller governor, which altered the thrust decay characteristic of the propeller when operating in an engine failure scenario. This altered characteristic was such that the actual V_{mcg} values were increased by as much as 15 knots calibrated airspeed (KCAS) over the values specified in the AFM. This condition poses a potential hazard in those situations where an airplane is operated in a high thrust-to-weight condition and the takeoff decision speed (V_1) is equal to or very near V_{mcg}: If the airplane were to experience a critical engine failure at, or very near, the currently published V_1 speed, and the flight crew elected to continue the takeoff, the faster thrust decay (and, hence, an increasing V_{mcg}) could cause the airplane to swerve more than the 25-foot limit permitted by Civil Aeronautics Regulation 4b (under which the Model 382 was certificated). This condition, if not corrected, could lead to the airplane departing the side of the runway.

Lockheed Model 382, 382E, and 382G series airplanes that are equipped with a servo-type valve housing assembly, having part number 714325–2, –3, –5, –6, or –7 installed on any outboard engine, have been determined to be subject to this unsafe condition.

The FAA has reviewed and approved Lockheed Airplane Flight Manual (AFM) Supplement 382–16, dated August 11, 1993, that provides revised performance data to address the increase in V_{mcg}. It also provides procedures to permit changing the power setting of the outboard engines, in order to partially mitigate the payload penalty associated with the increased V_{mcg}. This AFM supplement is intended to be interim action until a design change in the propeller governor is developed to address the V_{mcg} characteristics.

Since an unsafe condition has been identified that is likely to exist on other products of this same type design, the proposed AD would require a revision to the FAA-approved AFM to require takeoff operation of the airplane in accordance with the revised performance data contained in the AFM supplement described previously.

This is considered to be interim action until final action is identified, at which time the FAA may propose further rulemaking..

There are approximately 112 Model 382, 382E, and 382G series airplanes of the affected design in the worldwide fleet. The FAA estimates that 18 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed AFM change, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $990, or $55 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Lockheed: Docket 93–NM–220–AD.

Applicability: Model 382, 382E, and 382G series airplanes; equipped with a servo-type valve housing assembly, having part number 714325–2, –3, –5, –6, or –7, installed on any outboard engine; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To ensure that the airplane is operated at sufficient speeds to mitigate the problems associated with a faster thrust decay and to prevent the airplane from departing the side of the runway, accomplish the following:

(a) Within 60 days after the effective date of this AD, revise the Limitations and Performance Data Sections of the FAA-approved Airplane Flight Manual (AFM) to include the information specified in Lockheed Airplane Flight Manual (AFM) Supplement 382–16, dated August 11, 1993, and operate the airplane accordingly thereafter. The requirements of this paragraph may be accomplished by inserting AFM Supplement 382–16 into the AFM.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(c) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 21, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–7069 Filed 3–24–94; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 90N–0134]

RIN 0905–AD08

Food Labeling: Reference Daily Intakes; Reopening of Comment Period and Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of comment period and correction.

SUMMARY: The Food and Drug Administration (FDA) is reopening until April 25, 1994, the comment period on a proposed rule to establish Reference Daily Intakes (RDI's) for vitamin K, selenium, chloride, manganese, fluoride, chromium, and molybdenum for use in declaring the nutrient content of a food on its label or labeling; to change the units of measure for biotin, folate, calcium, and phosphorus; and to make consideration of selenium, molybdenum, fluoride, and chromium optional when determining nutritional inferiority, which appeared in the **Federal Register** of January 4, 1994 (59 FR 427). FDA is taking this action because of an inadvertent error in the document on the date on which comments were due. In addition, the document was published with some editorial errors. This document corrects those errors.

DATES: The comment period is reopened until April 25, 1994. The agency is proposing that any final rule that may issue based on this proposal become effective 30 days after date of publication of that final rule.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Camille E. Brewer, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5483.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 4, 1994 (59 FR 427), FDA issued a proposed rule to amend the food labeling regulations to establish Reference Daily Intakes (RDI's) for vitamin K, selenium, chloride, manganese, fluoride, chromium, and molybdenum for use in declaring the nutrient content of a food on its label or labeling; to change the units of measure for biotin, folate, calcium, and phosphorus; and to make consideration of selenium, molybdenum, fluoride, and chromium optional when determining nutritional inferiority. Because of an inadvertent error, the proposed rule specified two dates for the close of the comment period. On page 427, in the "DATES" section of the document, FDA listed March 7, 1994, as the close of the comment period. On page 431, in the "COMMENTS" section, however, the document incorrectly stated that July 7, 1994, would be the close of the comment period.

The agency's intent was to give the normal 60 days for comment; that is, to close the comment period on March 7, 1994. However, because of this error, the agency's intent was obviously obscured. As a result, there may be interested persons who have not yet sent in their comments even though March 7, 1994 has passed. Therefore, to ensure that all interested parties have an opportunity to comment, FDA is reopening the comment period for an additional 30 days. Comments must be received no later than April 25, 1994.

In addition, the agency discovered some editorial errors in the document. This document corrects these errors.

In FR Doc. 93–31816, appearing on page 427 in the **Federal Register** of Tuesday, January 4, 1994, the following corrections are made:

1. On page 430, in the second column, in the 4th full paragraph, in the last line, the words "being an" are corrected to read "being labeled"; and in the third column, in the third line from the bottom, "section IV.C.1." is corrected to read "section IV.B.".

2. On page 431, in the first column, in the first full paragraph, in the second line, the date "July 7, 1994" is corrected to read "March 7, 1994". This date is, of course, being extended until April 25, 1994 by this correction document.

Dated: March 17, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–7034 Filed 3–24–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 166

[CGD 94–023]

Port Access Routes; Approaches to Delaware Bay

AGENCY: Coast Guard, DOT.

ACTION: Notice of study.

SUMMARY: The Coast Guard is conducting a port access route study to evaluate the need for changes to the vessel routing measures in the approaches to Delaware Bay. Due to a number of near collisions, and at least one collision between an outbound tug-barge and an inbound deep draft ship, the Mariner's Advisory Committee of the Bay and River Delaware has requested that the eastern approach lane of the Traffic Separation Scheme (TSS) be adjusted and that an inshore traffic zone be established for coastwise traffic. This port access route study will determine what, if any, changes to the vessel routing measures are needed in the approaches to Delaware Bay. As a result of the study, a new or modified

TSS may be proposed in the **Federal Register.**

DATES: Comments must be received on or before June 23, 1994.

ADDRESSES: Comments should be mailed to Commander (oan), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, VA 23704–5004. The comments and other materials referenced in this notice will be available for inspection and copying at 431 Crawford Street, Portsmouth, VA, room 116. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: LT Tom Flynn, (804) 398–6285.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard is interested in receiving information and opinions from persons who have an interest in safe routing of ships in the study area. Vessel owners and operators are specifically invited to comment on any positive or negative impacts that they foresee, and to identify and support with documentation any costs or benefits which could result from the reconfiguration of the existing TSS.

Commenters should include their names and addresses, identify this notice (CGD 94–023), and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed post card or envelope is enclosed. In addition to the specific questions asked herein, comments from the maritime community, offshore development concerns, environmental groups and any interested parties are invited. All comments received during the comment period will be considered in the study and in development of any regulatory proposals.

The Fifth Coast Guard District will conduct the study and develop recommendations. LT Tom Flynn, Assistant Chief, Planning and Waterways Management Section, Aids to Navigation and Waterways Management Branch, Fifth Coast Guard District (804) 398–6285, is the project officer responsible for the study.

Background and Purpose

The 1978 amendments to the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1223(c), require that a port access route study be conducted prior to establishing or adjusting a traffic separation scheme (TSS). The Coast Guard is undertaking a port access route study to determine the effect of amending the TSS on vessel traffic safety in the study area.

A TSS is an internationally recognized routing measure that minimizes the risk of collision by separating vessels into opposing streams of traffic through the establishment of traffic lanes. Vessel use of a TSS is voluntary; however, vessels operating in or near an International Maritime Organization (IMO) approved TSS are subject to Rule 10 of the International Regulations for Prevention of Collisions at Sea, 1972 (72 COLREGS).

The TSS in the Approaches to Delaware Bay was last studied in 1981, and the results were published on October 5, 1981, (46 FR 49035). The study concluded that the existing TSS was adequate for the foreseeable future.

A Coast Guard initiated Waterways Analysis and Management System Study (WAMS) of the Delaware Bay Approach, conducted in 1990, recommended reorientation of the eastern approach TSS to the south. WAMS was developed to serve as the basis for a systematic analysis and management of the aids to navigation in our nation's waterways. WAMS is intended to identify the navigational needs of the users of a particular waterway, the present adequacy of the aids system in terms of those needs, and what is required in those cases where the users' needs are not being met. The WAMS process also looks into the resources—physical, financial, and personnel—needed to carry out the Aids to Navigation program responsibilities. The analyses of each waterway and the attendant resources are then integrated to provide documentation for both day to day management and future planning within the Aids to Navigation program.

Because of safety concerns, the Mariners Advisory Committee for the Bay and River Delaware has also requested that the eastern approach lanes of the TSS be adjusted and that an inshore traffic zone be established for coastwise traffic.

As part of the Delaware River Comprehensive Navigation Study, the U.S. Army Corps of Engineers is also conducting a study to consider construction of a Midstream Deepwater Port to provide deep draft crude oil carriers improved access for lightering operations in Anchorage A (off the entrance to the Mispillion River), 33 CFR 110.157, southwest of Brandywine Channel. If the Army Corps of Engineers determines there is a need for a Midstream Deepwater Port, a one-way access channel leading from the ocean to Anchorage A, in the vicinity of the current Southeastern Approach, may be designed to facilitate the safe movement of deep draft crude oil carriers to Anchorage A for lightering operations, and to encourage the use of larger and more efficient transport vessels to Delaware River ports. This channel would then lead through the Pilot Area near Cape Henlopen to Anchorage A, with the deepening of the lower (southeastern) corner of the anchorage. Incorporation of this study with the Army Corps of Engineers study is intended to identify those items of mutual concern and to blend channel deepening requirements into vessel traffic management requirements.

At the request of the Mariners' Advisory Committee for the Bay and River Delaware, four lighted buoys will be relocated within the Precautionary Area during the week of April 25, 1994. Relocation of these buoys will shift the pilot area one half nautical mile to the southeast and Delaware Bay Approach LB 4 one half nautical mile to the southwest. This will allow more sea room for tug and tow traffic approaching from and departing along the New Jersey coast.

Study Area

The study area is bounded by a line connecting the following geographic positions:

Latitude	Longitude
39°00′ N	75°10′ W
38°50′ N	74°30′ W
38°25′ N	74°30′ W
38°25′ N	75°10′ W

The study area encompasses the existing TSS which was adopted by the Inter-Governmental Maritime Consultative Organization (as the International Maritime Organization was formerly known) on October 28, 1969. A change to the southeastern approach lanes was implemented on March 15, 1976.

The TSS Off Delaware Bay consists of two parts as described below:

Part I: Eastern Approach

(a) A separation zone bounded by a line connecting the following geographical positions:

Latitude	Longitude
38°46.8′ N	74°34.6′ W
38°46.8′ N	74°55.7′ W
38°47.8′ N	74°55.4′ W
38°47.8′ N	74°34.6′ W

(b) A traffic lane for westbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
38°49.8′ N	74°34.6′ N
38°48.8′ N	74°55.3′ W

(c) A traffic lane for eastbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
38°45.8′ N	74°56.1′ W
38°44.8′ N	74°34.6′ W

(a) A separation zone bounded by a line connecting the following geographical positions:

Latitude	Longitude
38°27.0′ N	74°42.3′ W
38°42.2′ N	74°57.2′ W
38°43.4′ N	74°58.0′ W
38°27.6′ N	74°41.3′ W

(b) A traffic lane for north-westbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
38°28.8′ N	74°39.3′ W
38°45.1′ N	74°56.8′ W

(c) A traffic lane for south-eastbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
38°42.8′ N	74°58.9′ W
38°27.0′ N	74°45.4′ W

Precautionary Area

A precautionary area with a radius of eight miles centered upon Harbour of Refuge Light in geographical position 38°48.9′ N, 754°05.6′ W.

Issues

The study may recommend the following options:

(a) Make no changes to the current traffic separation system in the Delaware Bay Approaches.

(b) Discontinue the entire Traffic Separation Scheme (TSS) in the Delaware Bay Approaches.

(c) Adjust the Eastern Approach TSS by narrowing the separation zone to allow the establishment of an inshore traffic zone.

(d) Relocate the Southern Approach TSS, and include a deepwater route similar to the deepwater route in the Southern Approach to Chesapeake Bay, i.e., the deepwater route centered between inbound and outbound lanes.

(e) Adjust the Eastern Approach TSS by narrowing the separation zone to allow the establishment of an inshore traffic zone and retain the current Southern Approach TSS with a midstream Deepwater Port on the eastern side of the inbound traffic lane.

(f) Adjust the Eastern Approach TSS by narrowing the separation zone to allow the establishment of an inshore traffic zone, and, relocate the Southern Approach TSS to include a deepwater route similar to the deepwater route in the Southern Approach to Chesapeake Bay, i.e., the deepwater route centered between inbound and outbound lanes.

(g) Abolish the Eastern Approach TSS and maintain the current Southern Approach TSS.

Procedural Requirements

In order to provide safe access routes for movement of vessel traffic proceeding to and from U.S. ports, the PWSA directs that the Secretary designate necessary fairways and traffic separation schemes in which the paramount right of navigation over all other uses shall be recognized. Before a designation can be made, the Coast Guard is required to undertake a study of potential traffic density and the need for safe access routes.

During the study, the Coast Guard is directed to consult with federal and state agencies and to consider the views of representatives of the maritime community, port and harbor authorities or associations, environmental groups, and other parties who may be affected by the proposed action.

In accordance with 33 U.S.C. 1223(c), the Coast Guard will, to the extent practicable, reconcile the need for safe access routes with the needs of all other reasonable uses of the area involved. The Coast Guard will also consider previous studies and experience in the areas of vessel traffic management, navigation, shiphandling, the effects of weather, and prior analysis of the traffic density in certain regions.

The results of this study will be published in the **Federal Register**. If the Coast Guard determines that new routing measures are needed, a notice of proposed rulemaking will be published. It is anticipated that the study will be concluded by 30 October 1994.

Dated: March 22, 1994.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 94-7103 Filed 3-24-94; 8:45 am]

BILLING CODE 4910-14-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1275

RIN 3095-AA59

Preservation and Protection of and Access to the Presidential Historical Materials of the Nixon Administration; Amendment of Public Access Regulations

AGENCY: National Archives and Records Administration.

ACTION: Proposed rule.

SUMMARY: The National Archives and Records Administration proposes to amend regulations on procedures for preserving and protecting the Presidential historical materials of the Nixon administration and for providing public access to these materials. The Archivist of the United States is required by law to issue these regulations, and may amend them from time to time. The proposed regulatory amendments would clarify various terms that appear in 36 CFR part 1275; clarify the nature of the archival processing being conducted on the Nixon Presidential materials; and provide for the reproduction of the Nixon White House tape recordings. The proposed amendments to 36 CFR part 1275 would affect former President Nixon and other individuals whose names appear in the materials, as well as members of the general public interested in conducting research regarding those materials.

DATES: All comments must be received by close of business May 24, 1994.

ADDRESSES: All comments must be submitted in writing to the Policy and Program Analysis Division (NAA), National Archives and Records Administration, The National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740-6001.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard at (301) 713-6730.

SUPPLEMENTARY INFORMATION: The current regulations were required to be promulgated because the previous regulations were ruled invalid by the United States District Court for the District of Columbia in *Allen* v. *Carmen*, 578 F. Supp. 951 (D.D.C. 1983); the case held that the previous regulations were tainted by the legislative veto provision of the Presidential Recordings and Materials Preservation Act ("PRMPA"), 44 U.S.C. 2111 note (1974). The current regulations were published on February 28, 1986, 51 FR 7228, and became effective on June 26, 1986. On April 12,

1988, the U.S. Court of Appeals for the District of Columbia Circuit upheld the District Court's approval of the regulations promulgated by the Archivist on June 26, 1986. *Public Citizen* v. *Burke*, 843 F.2d 1473 (D.C. Cir. 1988).

Since promulgation of the current regulations, the National Archives and Records Administration has continued to prepare the Nixon Presidential materials for public access. Nixon Presidential historical material falling into several categories has been released since 1986. One category consists of selected subject categories and Staff Member and Office Files from the Nixon White House Central Files, which has been released (subject to the withholding of restricted material) in relatively small portions over time. Most of this material from the White House Central Files documents the President's constitutional and statutory duties, and the release of that material has been largely uneventful. 51 FR 32700 (Sept. 15, 1986), 53 FR 1870 (Jan. 22, 1988), 53 FR 40976 and 41441 (Oct. 19, 1988), 54 FR 24054 (June 5, 1989), 54 FR 43878 (Oct. 27, 1989), 56 FR 30774 (July 5, 1991), 57 FR 417 (Jan. 6, 1992), 57 FR 23602 (June 4, 1992), 58 FR 17433 (April 2, 1993), and 58 FR 31548 (June 3, 1993). In addition, the National Archives and Records Administration has released the Nixon White House Photo Collection, 44 FR 57221 (Oct. 4, 1979); Nixon White House Communications Agency Audio and Video Files, 51 FR 26782 (July 25, 1986); Nixon White House selected audiovisual materials, 53 FR 40976 (October 19, 1988); and Nixon Presidential historical materials relating to POW/MIA matters, 58 FR 52121 (Oct. 6, 1993).

In 1987, a large series of materials known as the White House Special Files was released. 52 FR 3068 (Jan. 30, 1987). That file consists of many thousands of pages of sensitive documents, a high percentage of which document abuses of power. In addition to the withholding of material that the National Archives and Records Administration determined to be subject to restriction under the current regulations, the National Archives and Records Administration withheld material from the White House Special Files which it deemed releasable, but which former President Nixon claimed was subject to restriction or that was private or personal and therefore returnable. These contested documents are currently undergoing further review by the Presidential Materials Review Board in accordance with the provisions of the current PRMPA regulations.

On June 4, 1991, the National Archives and Records Administration released a group of Nixon White House tape recordings. The release consisted of approximately 60 hours of tape recordings previously subpoenaed by the Watergate Special Prosecution Force ("WSPF") during its investigations, as well as tape transcripts located among the records of the WSPF. Approximately 12½ hours of these tape recordings had previously been played in open court in *United States* v. *Connelly* and *United States* v. *Mitchell* and released, 45 FR 26823 (April 21, 1980); however, the balance of approximately 47½ hours had not been released previously. This 1991 release of tape recordings and accompanying transcripts, processed in accordance with the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *Ricchio* v. *Klein*, 773 F.2d 1389 (D.C. Cir. 1985) was not challenged by any party in federal court. 56 FR 12400 (March 25, 1991).

The National Archives and Records Administration decided that the best way to proceed with the release of the body of the 4,000 hours of Nixon White House tape recordings was to release Watergate-related segments of the tape recordings in small monthly groupings on an ongoing basis. The first of these releases was noticed in the **Federal Register** on April 2, 1993, 58 FR 17433, and took place on May 17, 1993, without any objections from affected parties.

The second and third releases were noticed in the **Federal Register** on June 3, 1993, and July 2, 1993, to take place on July 15, 1993, and August 26, 1993, respectively. 58 FR 31548 (June 3, 1993); 58 FR 35983 (July 2, 1993). Former President Nixon raised certain procedural objections to these proposed releases. When the National Archives and Records Administration rejected former President Nixon's contention that those releases should not go forward, he sought relief in the courts. On August 9, 1993, Judge Royce Lamberth of the United States District Court for the District of Columbia issued an order preliminarily enjoining the National Archives and Records Administration from carrying out the releases of allegedly Watergate-related tape recordings scheduled for August 13 and 26, 1993, pending (1) Segregation and return to former President Nixon of all private or personal conversations on the tape recordings; and (2) processing of the tape recordings before release to the public as a single "integral file segment." The Court's ruling relied on the terms of the current PRMPA regulations, and on the terms of a draft processing manual which the National Archives and Records Administration's Nixon Presidential Materials Project ("Nixon Project") has used in preparing Nixon Presidential materials for public disclosure.

In several respects, which will be discussed in greater detail below, the current regulations and the Nixon Project draft processing manual, especially as interpreted preliminarily by the court in the context of the preliminary injunction, do not reflect what the National Archives and Records Administration has come to recognize as the most appropriate fashion in which to process and release the Nixon White House tape recordings. Therefore, the National Archives and Records Administration proposes certain amendments to the current regulations (which will have the effect of altering the draft processing manual) to balance the National Archives and Records Administration's responsibility to provide public access to the tape recordings, including those segments relating to Watergate, at the earliest reasonable date, with the need to protect the rights of former President Nixon and other affected parties.

General

Section 1275.16(b) is amended to make clear that no physical portion of the original tape recordings shall constitute private or personal material, and therefore no portion of those original recordings is to be returned to former President Nixon or to any other affected party. The PRMPA requires the Archivist to maintain those original tape recordings, whether or not they contain personal conversations; as a result, the amendment to § 1275.16(b) states that the original tape recordings constitute Presidential historical materials.

Section 1275.16(e) clarifies the nomenclature used throughout the regulations and distinguishes between "Archivist," defined as the Archivist of the United States or his or her designated agent, and "archivist," as defined in the current subsection, *i.e.*, as an employee of the National Archives and Records Administration, who, by education or experience, is specially trained in archival techniques.

Section 1275.16(g) clarifies the definition of "archival processing" to ensure that nothing in the subsection creates any obligation on the part of the Archivist to perform any one particular archival processing task listed in the subsection. In so doing, the National Archives and Records Administration intends to make clear that transcripts of the tape recordings need not be made. Although the current regulations indicate that the processing of the Nixon

White House materials may undergo one or more of several archival processing phases, including the preparation of transcripts, the National Archives and Records Administration does not believe that the regulations intended to obligate the processing archivists to transcribe all 4,000 hours of tape recordings before releasing them to the public. Indeed, the National Archives and Records Administration has estimated that it would take an extraordinary amount of staff time to accomplish such a task. In addition, the definition of "archival processing" in § 1275.16(g) has been expanded to reflect the archival processing of the Nixon Presidential materials that actually has been taking place.

Section 1275.20 is amended to be consistent with the amended definition of "Archivist" set forth in amended § 1275.16(e) above.

Section 1275.42(a) is amended to clarify the manner in which the National Archives and Records Administration intends to proceed with the archival processing and release of the tape recordings and all other non-tape Nixon Presidential materials. The current regulations provide that Nixon White House materials will be disclosed to the public in "integral file segments." The concept of integral file segment, although not defined anywhere in the current regulations, is based on standard archival practice, and ordinarily refers to an archival determination that a particular group of processed documents constitutes an intelligible and complete unit for purposes of historical research. Archival determinations of integral file segments may vary significantly both in the quantity of inclusive materials and in the qualitative factors used in determining the components of a particular file segment (*e.g.*, subject matter, author, time frame, etc.).

The Nixon Project draft processing manual indicates that the National Archives and Records Administration intended to process the entire 4,000 hours of tape recordings as one integral file segment. In support of his motion for a preliminary injunction that was issued on August 9, 1993, former President Nixon argued that the draft processing manual, when read in conjunction with the current regulations, prohibits the National Archives and Records Administration from releasing any portion of the tape recordings before the remaining body of the non-restricted tape recordings (other than the approximately 60 hours of WSPF tape segments previously released) is processed and released. Former President Nixon's position is not supported by the realities of processing the materials for public access nor, aside from the provisions of the current regulations and draft processing manual hereby proposed for amendment, supported legally, since it is contrary to other statutory and regulatory obligations of the National Archives and Records Administration.

First, waiting until all 4,000 hours of tape have been reviewed and prepared for release would seriously undermine the statutory and regulatory obligation of the National Archives and Records Administration to give the public access to Watergate-related material at the earliest reasonable date. Second, releasing or restricting all 4,000 hours at once would be inconsistent with current § 1275.42(b), which requires the National Archives and Records Administration to publish a **Federal Register** notice of a proposed opening of materials. The purpose of that notice is to allow interested parties the opportunity to review—and object as appropriate—to those materials which are being proposed for opening. Under current § 1275.44(a), anyone who wishes to object to a proposed opening must do so within thirty (30) days of the notice. In light of the fact that the collection of tape recordings consists of some 4,000 hours (minus copies of approximately 775 hours of tape segments previously identified as private or personal or room noise and offered for return to former President Nixon), it would be impossible for any one individual to review all portions of the tape recordings proposed for opening within the allotted thirty-day period if all of the unrestricted tape recordings were to be opened at the same time.

To address these concerns, the proposed amendments to § 1275.42(a) would allow the release of the tape recordings in groupings which would permit the opening of reasonable portions of the tape recordings without the need for all 4,000 hours to be released at once.

In addition, amended § 1275.42(a) provides that the Archivist is free to release segments of the tape recordings that are not private or personal prior to transferring private or personal material in accordance with current § 1275.48. This amendment would allow the National Archives and Records Administration to continue processing and opening Watergate-related segments of the tape recordings at the earliest reasonable date, in accordance with its statutory and regulatory responsibility, before all private or personal conversations are culled out of copies of the remaining parts of the tape recordings and returned to former President Nixon or other affected parties. Given that the release of non-private conversations would not violate an individual's right to keep private conversations confidential, this amendment is entirely appropriate.

Sections 1275.46(d) and 1275.46(f) are amended to be consistent with the amended definition of "Archivist" set forth in amended § 1275.16(e).

Section 1275.48(a) is amended to be consistent with the amendment to § 1275.16(b), to make clear that no portion of the original tape recordings is to be returned to former President Nixon or to any other affected party. The PRMPA requires the Archivist to maintain those original tape recordings, whether or not they contain private or personal conversations. The amendment to this subsection would eliminate any doubt that the Archivist is to retain the original tape recordings.

Section 1275.64 is amended to include a provision allowing for the reproduction of tape recordings opened to the public. This amendment is fully consistent with the practice of the National Archives and Records Administration with regard to other tape recordings. The issue of whether to provide copies of tape recordings has been considered by the National Archives and Records Administration on several occasions. At the time the current regulations were being written, the National Archives and Records Administration decided to maintain its prior position of not allowing copies of tape recordings, although it specifically stated that this position would be reviewed periodically. 51 FR 7228 (Feb. 28, 1986). After careful reconsideration of its position, the National Archives and Records Administration has decided to allow the copying of released tape recordings. In so doing, the National Archives and Records Administration relies on the guidance from the Supreme Court in *Nixon* v *Warner Communications, Inc.*, 435 U.S. 589, 606–08 (1978), wherein the Supreme Court recognized the prerogative of the National Archives and Records Service (the predecessor to the National Archives and Records Administration) to consider providing the public with an opportunity to obtain such copies. In light of the Supreme Court's decision in *Warner Communications*, and because such copying would seem to be in the public interest generally as well as in keeping with the spirit of the PRMPA, the National Archives and Records Administration is amending the regulations to allow for such copying.

Section 1275.64(b) is also amended to be consistent with the nomenclature distinction between "Archivist" and "archivist" as set forth in § 1275.16(e).

Section 1275.66(a) is amended to accommodate two different possibilities with respect to the reproduction of released Nixon materials other than tape recordings: Copying by researchers on self-service government copiers; and copying by contract vendors at the request of the National Archives and Records Administration. This change reflects not only current practice at the Nixon Project, but common practice at other presidential libraries within the National Archives and Records Administration system as well as NARA regulations regarding copying of archival documents.

Sections 1275.70(a) and 1275.70(b) are amended to be consistent with the nomenclature distinction between "Archivist" and "archivist" as set forth in § 1275.16(e) above.

Typographical corrections are made to § 1275.46(i) and § 1275.56.

The proposed amendments to 36 CFR part 1275 are not a significant regulatory action for purposes of Executive Order 12866 of September 30, 1993. As required by the Regulatory Flexibility Act, it is hereby certified that these proposed regulatory amendments will not have a significant impact on small business entities.

List of Subjects in 36 CFR Part 1275

Archives and records.

For the reasons set forth in the preamble above, the National Archives and Records Administration proposes to amend part 1275 of title 36 of the Code of Federal Regulations as follows:

PART 1275—PRESERVATION AND PROTECTION OF AND ACCESS TO THE PRESIDENTIAL HISTORICAL MATERIALS OF THE NIXON ADMINISTRATION

1. The authority citation for part 1275 continues to read as follows:

Authority: Sec. 102(a) of the National Archives and Records Administration Act of 1984, Pub.L. No. 98–497; 44 U.S.C. 2104; and secs. 103 and 104 of the Presidential Recordings and Materials Preservation Act, 88 Stat. 1695; 44 U.S.C. 2111 note.

2. Section 1275.16 is amended by revising paragraphs (b), (e), and (g) to read as follows:

§ 1275.16 Definitions.

* * * * *

(b) *Private or personal materials.* The term "private or personal materials" shall mean those papers and other documentary or commemorative materials in any physical form relating solely to a person's family or other non-governmental activities, including private political associations, and having no connection with his constitutional or statutory powers or duties as President or as a member of the President's staff. No physical part of any original tape recording to which reference is made in § 1275.64 shall constitute private or personal materials. The original tape recordings in their respective entireties shall constitute Presidential historical materials.

* * * * *

(e) *Archivist.* The term "Archivist" shall mean the Archivist of the United States or his designated agent. The term "archivist" shall mean an employee of the National Archives and Records Administration who, by education or experience, is specially trained in archival science.

* * * * *

(g) *Archival processing.* The term "archival processing" may include the following general acts performed by archivists with respect to the Presidential historical materials: Shelving boxes of documents in chronological, alphabetical, numerical or other sequence; surveying and developing a location register and cross-index of the boxes; arranging materials; refoldering and reboxing the documents and affixing labels; producing finding aids such as folder title lists, cross-indexes, subject lists, scope and content notes, biographical data, and series descriptions; rewinding, duplicating and preserving the original tape recordings; enhancing the tape recordings on which the conversations are wholly or partially unintelligible so that extraneous noises may be filtered out; producing general subject matter logs of the tape recordings; reproducing and transcribing tape recordings; reviewing the materials to identify items that appear subject to restriction; identifying items in poor physical condition and assuring their preservation; identifying materials requiring further processing; and preparation for public access of all materials which are not subject to restriction.

* * * * *

3. Section 1275.20 is revised to read as follows:

§ 1275.20 Responsibility.

The Archivist is responsible for the preservation and protection of the Presidential historical materials.

4. Section 1275.42 is amended by revising paragraph (a) to read as follows:

§ 1275.42 Processing period; notice of proposed opening.

(a)(1) The archivists will conduct archival processing of those materials other than tape recordings to prepare them for public access in accordance with the provisions set forth in this section. In conducting the archival processing of those materials, the archivists will restrict those portions of the materials pursuant to §§ 1275.50 and 1275.52, and will segregate private or personal materials for transfer in accordance with § 1275.48. All materials other than tape recordings to which reference is made in § 1275.64 will be prepared for public access and released subject to restrictions or outstanding claims or petitions seeking such restrictions.

(2) The archivists will conduct archival processing of the tape recordings to prepare them for public access in accordance with the provisions set forth in this section. In conducting the archival processing of the tape recordings, the archivists will restrict those segments of the tape recordings pursuant to §§ 1275.50 and 1275.52, and will segregate additional private or personal materials for transfer in accordance with § 1275.48. The tape segments which consist of Watergate materials, as defined in § 1275.16(c), will be given priority processing by the archivists and will be prepared for public access and released as the Archivist determines to be appropriate. After the tape segments which consist of abuse of power materials have been released, the archivists will conduct archival processing of the remainder of the tape recordings in reasonable chronological segments beginning with February 1971 and ending with July 1973. The remaining tape segments will be prepared for public access and released as the Archivist determines to be appropriate. Nothing in this subsection prohibits the Archivist from preparing for public access and releasing segments of the tape recordings prior to transferring private or personal materials pursuant to § 1275.48.

* * * * *

§ 1275.46 [Amended]

5. Section 1275.46 is amended by removing in paragraph (d) and paragraph (f), wherever it appears, the term "Archivist of the United States" and adding in its place the term "Archivist", and by removing in paragraph (i)(2) the term "reasonbly" and adding in its place the term "reasonably".

6. Section 1275.48 is amended by revising paragraph (a) to read as follows:

§ 1275.48 Transfer of materials.

(a) The Archivist will transfer sole custody and use of those materials determined to be private or personal, or to be neither related to abuses of governmental power nor otherwise of general historical significance, to former President Nixon or his heirs or, when appropriate and after notifying Mr. Nixon or his designated agent, to the former staff member have primary proprietary or commemorative interest in the materials. No physical part of any original tape recordings to which reference is made in § 1275.64 shall be transferred to former President Nixon or his heirs, or to the former staff members of former President Nixon, under this section.

* * * * *

§ 1275.56 [Amended]

7. Section 1275.56 is amended by removing the term "adminsitrative" and replacing it with the term "administrative".

8. Section 1275.64 is amended by removing in paragraph (b) the term "Archivist" and replacing it with the term "archivist", and by adding new paragraph (d) to read as follows:

§ 1275.64 Reproduction of tape recordings of Presidential conversations.

* * * * *

(d) The reproduction for researchers of the reference copies of the tape recordings described in paragraph (a) of this section is permitted. Such copying will be controlled and provided by the National Archives and Records Administration. The fees for the reproduction of the tape recordings under this section shall be those prescribed in the schedule set forth in part 1258 of this chapter or pertinent successor regulation, as that schedule is amended from time to time.

9. Section 1275.66 is amended by revising paragraph (a) to read as follows:

§ 1275.66 Reproduction and authentication of other materials.

(a) Copying of materials other than tape recordings described in § 1275.64 may be done by the National Archives and Records Administration or by researchers using self-service copiers. Such self-service copying shall be done in accordance with National Archives and Records Administration policy on self-service copying set forth at 36 CFR 1254.71, to ensure that such copying will not harm the materials or disrupt reference activities.

* * * * *

§ 1275.70 [Amended]

10. Section 1275.70 is amended by removing in paragraph (a) the term "an Archivist" and adding in its place the term "an archivist" and by removing in paragraph (b) the term "Archivists" and adding in its place the term "archivists".

Dated: March 22, 1994.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 94–7187 Filed 3–24–94; 8:45 am]

BILLING CODE 7515–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 114

[CGD 85–080]

RIN 2115–AC22

Small Passenger Vessel Inspection and Certification; Announcement of Public Hearings

AGENCY: Coast Guard, DOT.

ACTION: Notice of hearings.

SUMMARY: On January 13, 1994, the Coast Guard published in the **Federal Register** (59 FR 1994) a Supplemental Notice of Proposed Rulemaking (SNPRM) containing a complete revision to the proposed regulations governing small passenger vessels. The SNPRM was in response to numerous comments received to a Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** (54 FR 4412) on January 30, 1989. The Coast Guard will receive written comments on the SNPRM through June 13, 1994.

DATES: For dates of public hearings see **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: For addresses of public hearings see **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: LCDR Marc Cruder, Project Manager, Office of Marine Safety, Security and Environmental Protection, (G–MVI–2), phone (202) 267–1181.

SUPPLEMENTARY INFORMATION: The SNPRM published on January 13, 1994, stated that the Coast Guard planned to hold public hearings on this rulemaking in New London, CT, Seattle, WA, Tampa, FL, and Chicago, IL. The SNPRM also solicited recommendations for other hearing sites.

Several comments were received requesting additional hearings in specific locations. In response to those comments, the Coast Guard will hold public hearings on the dates and locations identified below:

—New London, Connecticut; Monday, April 11, 1994. U.S. Coast Guard Academy, Dimick Hall, 15 Mohegan Avenue, New London, CT.

—Seattle, Washington; Monday, April 18, 1994. Stouffer Madison Hotel, East Room, 515 Madison Street, Seattle, WA. Telephone No. (800) 468–3571.

—Chicago, Illinois; Saturday, April 23, 1994. Executive House Hotel, Picasso Room, 71 East Wacker Drive, Chicago, IL. Telephone No. (312) 346–7100.

—Annapolis, Maryland; Wednesday, April 27, 1994. U.S. Naval Station, Recreational Services Building 89, Bennion Road, Annapolis, MD.

—Tampa, Florida; Monday, May 2, 1994. U.S. Naval Reserve Center, Auditorium, 1325 York Street, Tampa, FL.

—Cincinnati, Ohio; Monday, May 9, 1994. Radisson Inn Airport, Greater Cincinnati International Airport, Concord A & B, Cincinnati, OH. Telephone No. (606) 371–6166.

—Long Beach, California; Friday, May 27, 1994. Renaissance Hotel, Sicilian Ballroom, 111 Each Ocean Boulevard, Long Beach, CA. Telephone No. (310) 437–5900.

In the preamble of the SNPRM (pages 1994–2092), the Coast Guard solicited public comment on certain proposed requirements. Specifically, the Coast Guard would like more information on the following:

1. 46 CFR 175.400: Proposed definition of "length", pp. 2005–2007.
2. 46 CFR 177.520: Applicability of NVIC 14–91 on egress and refuge areas to Subchapter K vessels, p. 2029.
3. 46 CFR 178: Use of freeing ports on cockpit vessels, p. 2034.
4. 46 CFR 178.340: Usefulness of ABYC H–35 on pontoon boat load capacity for inspected small passenger vessels, p. 2034.
5. 46 CFR 178.450: Weather deck drainage method, p. 2036.
6. 46 CFR 179.310: Collision bulkhead requirements, p. 2037.
7. 46 CFR 179.350: Location of opening portlights on sailing vessels, p. 2038.
8. 46 CFR 179.350: Material and types of valves suitable as though hull penetrations, p. 2038.
9. 46 CFR 179.360: Coaming requirements, p. 2039.
10. 46 CFR 180.70: Ring buoy waterlight requirements, p. 2041.
11. 46 CFR 181.120: Excess fire protection equipment, p. 2046.
12. 46 CFR 182.405: Fuel restrictions for internal combustion engines, p. 2051.
13. 46 CFR 182.455: Use of flexible nonmetallic hose in place of fuel piping or tubing, p. 2055.

14. 46 CFR 182.455: Flexible nonmetallic hose replacement intervals, p. 2055.
15. 46 CFR 182.460: Definition of "open to the atmosphere", "enclosed space", and "partially enclosed space", p. 2056.
16. 46 CFR 183: Applicability of ABYC E–8 on AC electrical systems and E–9 on DC electrical systems to inspected small passenger vessels, p. 2060.
17. 46 CFR 183.320: Generator temperature ratings, p. 2061.
18. 46 CFR 183.380: Suitability of UL Standard 1193 on boat circuit breakers for inspected small passenger vessels, p. 2063.
19. 46 CFR 184: Separate power sources for radios, p. 2066.

Each hearing will begin at 10 a.m. and end at 5 p.m. Interested persons are invited to participate in these hearings. Those wishing to make an oral statement should register at least 2 working days before the date of the particular hearing. Oral statements by individuals without prior registration will be allowed only if time permits. The Coast Guard reserves the right to impose time limits on oral presentations. To register, write or call the Executive Secretary, Marine Safety Council (G–LRA–2/3600) (GGD 85–080), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, telephone number (202) 267–1477. If time permits, and answer period will follow the oral presentations.

Dated: March 21, 1994.

R.C. North,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–7101 Filed 3–24–94; 8:45 am]

BILLING CODE 4910–14–M

Notices

Federal Register
Vol. 59, No. 58
Friday, March 25, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Cedar Gulch Timber Sale; Kootenai National Forest, Sanders County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) to disclose the environmental effects of timber harvest, reforestation, improvement of harlequin duck, mule deer and grizzly bear habitat, road reconstruction, road construction, and road closure in the vicinity of Big Cedar Gulch, Orr Creek and Rock Creek drainages. The area is located near the southwest corner of the Cabinet Mountains Wilderness, Kootenai National Forest, Cabinet Ranger District, Sanders County, Montana. Part of the proposed project's activities are within the McKay Creek Roadless Area (#676).

There are a variety of purposes for management activities in the Cedar Gulch area; the primary purposes are: (1) Repair the unsafe and sediment producing Orr Creek road (#2285) by installing and improving drainage structures and turnouts and improving the road surface, (2) Improve limited mule deer habitat by increasing the quantity and quality of browse, (3) Improve harlequin duck habitat in Rock Creek by reducing the height of the debris jams and constructing additional debris jams, (4) Salvage dead and dying trees, (5) Provide timber to the local economy, (6) Improve white bark pine habitat for grizzly bears. To meet Kootenai Forest Plan standards for open road densities in the project area and surrounding area, 6.9 miles of roads presently open at least part of the year would be closed year-round to reduce open road density to maintain or improve grizzly bear habitat security.

This project-level EIS will tier to the Kootenai National Forest Land and Resource Management Plan (Forest Plan) and Final EIS (September, 1987), which provides overall guidance of all land management activities on the Kootenai National Forest, including wildlife, timber and road management.

DATES: Oral comments and suggestions should be received and written comments and suggestions should be post marked within 30 days following publication of this notice.

ADDRESSES: I am the responsible official, please submit written comments and suggestions on the proposed management activities or a request to be placed on the project mailing list to James I. Mershon, District Ranger, Cabinet Ranger District, Kootenai National Forest, 2693 Highway 200, Trout Creek, Montana, 59874, (406) 827–3533 or 847–2462.

FOR FURTHER INFORMATION CONTACT: Michael Giesey, EIS Team Leader, Cabinet Ranger District.

SUPPLEMENTARY INFORMATION: The project area consists of approximately 2700 acres of National Forest land located in T26N; R32W; Sections 10–15, 22–24; and T26N; R31W, Sections 7, 18; P.M.

Timber harvest is proposed on approximately 184 acres of forested land which has been designated as suitable for timber management by the Kootenai Forest Plan. The timber harvest operations and general administration of National Forest lands would require reconstruction of approximately 6.6 miles of existing system roads and 1.0 mile of temporary road, and construction of approximately 0.5 mile of temporary road. About 0.6 mile of temporary road would be obliterated after use. Also, road closures involve closing 6.9 miles of existing system roads to motorized vehicles year-round in and adjacent to the Cedar Gulch project area. Even-aged management would be used in the majority of the areas proposed for harvest. Seed tree, shelterwood and clearcut regeneration harvests (all with permanent reserve trees) are general prescriptions that are to be applied. Patch clearcuts in the higher elevations are recommended for mule deer habitat improvement and to enhance white bark pine habitat for grizzly bears. Where timber harvest is used for wildlife habitat enhancement, prescribed burning would also occur. Logging systems include skyline and helicopter. Of the 184 acres proposed for harvest: 25 acres are mule deer and grizzly bear habitat improvement; 95 acres are to salvage trees affected by root rot or mountain pine beetle and improve big game browse; 32 acres are to improve big game browse while maintaining the ponderosa pine type; and 32 acres are to improve the spring-time forage for grizzly bear and improve forage for big game.

The decision to be made is what, if anything, should be done in the Cedar Gulch Project Area to: (a) Improve the condition of Orr Creek road to reduce erosion and provide a safe travel way, (b) dispose of slash and reforest harvested lands, (c) improve mule deer, harlequin duck and grizzly bear habitat, (d) provide timber to the local economy, and (e) develop and manage the road system to facilitate removal of timber, reforest stands, and maintain access to the Engle Peak trailhead (located at the end of Orr Creek Road) while maintaining grizzly bear security.

The Kootenai Forest Plan provides guidance for management activities within the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. The areas of proposed timber harvest, reforestation and road construction would occur within Management Area 14 which is areas suitable for timber production and important grizzly bear habitat.

The Forest Service will consider a range of alternatives. One of these will be the "no action" alternative, in which none of the proposed activities would be implemented. Another alternative will be one which proposes no activities in the McKay Creek Roadless area. Additional alternatives will be developed to address comments and suggestions raised by the public. The alternatives will examine varying levels and locations for the proposed activities to achieve the proposal's purposes, as well as to respond to the issues and other resource values.

The EIS will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Past, present, and projected activities on both private and National Forest lands will be considered. The EIS will disclose the analysis of site-specific mitigation measures and their effectiveness.

Public participation is an important part of the analysis, commencing with the initial scoping process (40 CFR 1501.7), which will occur March 1994 to April 1994. In addition, the public is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. No public meetings are scheduled at this time.

Comments from the public and other agencies will be used in preparation of the Draft EIS. The scoping process will be used to:

1. Identify potential issues.
2. Identify major issues to be analyzed in depth.
3. Eliminate minor issues or those which have been covered by a relevant previous environmental analysis, such as the Kootenai Forest Plan EIS.
4. Identify alternatives to the proposed action.
5. Identify potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects).
6. Determine potential cooperating agencies and task assignments.

Some public comments have already been received in conjunction with Cabinet District Open House meetings in January 1994. The following preliminary issues have been identified so far:

a. What are the effects of sediment from logging activities on the fisheries within Rock Creek?

b. What effect would the proposal have on wildlife habitat and security?

c. What effect would the proposal have on the roadless character of McKay Creek Roadless Area #676 and the Cabinet Wilderness?

d. What would be the effects on the visual quality of the area as viewed from Highway 200 and the Clark Fork River?

e. Are there any sensitive, threatened, or endangered plant or animal species in the area? How would this project affect them if they are present?

f. How will this project, in conjunction with the proposed Asarco Rock Creek mine, affect grizzly bear security?

Other issues commonly associated with timber harvesting and road construction include: Effects on cultural resources, soils, and old growth. This list may be verified, expanded, or modified based on public and internal scoping for this proposal.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in September of 1994. At that time, the EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in management of the Cedar Gulch area participate at that time. To be most helpful, comments on the Draft EIS should be as site-specific as possible. The Final EIS is scheduled to be completed by January 1, 1995.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 30-day scoping comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in developing issues and alternatives.

To assist the Forest Service in identifying and considering issues on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: March 17, 1994.

James I. Mershon,

District Ranger.

[FR Doc. 94–7136 Filed 3–24–94; 8:45 am]

BILLING CODE 3410–11–M

Packers and Stockyards Administration

Amendment to Certification of Central Filing System—Oklahoma

The Statewide central filing system of Oklahoma has been previously certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by the Oklahoma Secretary of State, for farm products produced in the State (52 FR 49056, December 29, 1987).

The certification is hereby amended on the basis of information submitted by Glo Henley, Oklahoma Secretary of State, for additional farm products produced in the State as follows:

Bass, bluegill, channel cat, carp, and minnows, provided they are produced in farm ponds or other farming operations.

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Public Law 99–198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.18(e)(3), 2.56(a)(3), 55 FR 22795.

Dated: March 21, 1994.

Calvin W. Watkins,

Acting Administrator, Packers and Stockyards Administration.

[FR Doc. 94–7054 Filed 3–24–94; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 02/16/94–03/15/94

Firm name	Address	Date petition accepted	Product
Circuit Master Assembly, Inc.	5443 115th Ave. North, Clearwater, FL 34620	02/22/94	Printed Circuits (Single, Double and Multi-Sided).
Kryptonics, Inc	740 S. Pierce Avenue, Louisville, CO 80027	02/25/94	Wheels for Roller-Skates and Skateboards.
Monosep Corporation.	326 Mineral Road, Broussard, LA 70518–5517	03/03/94	Waste-Water Treatment Equipment.
Tennis Ball Saver, Inc.	16622 Gemini Lane, Huntington Beach, CA 92647	03/03/94	Sporting Goods: Tennis Ball and Racquet Ball Savers.
Jomar Corp	115 E Pky. Dr., Offshore Com. Pk., Pleasantville, NJ 08232.	03/07/94	Molds for Plastic Rubber to be Used in the Blowmolding Process.
Joliet Equipment Corporation.	1 Doris Avenue, Joliet, IL 60433	03/07/94	Industrial Motor Drive Control System.
Bliss Manufacturing, Inc.	152 Madison Avenue, New York, NY 10016	03/07/94	Women's Lingerie—i.e. Brassieres and Other Body Supporting Garments Made From Cotton or Polyester.
Fine Pine, Inc.	21189 U.S. Hwy. 31, Vinemont, AL 35179	03/08/94	Bedroom Furniture and Pine Dinette.
Roma Color, Inc	749 Quequechan Street, Fall River, MA 02723	03/10/94	Organic Pigments: Chemicals Mixed Together for Printing.
RU-Nell, Inc	PO Box 137, 2855 Old Rock Mart Hwy, Dallas, GA 30132.	03/11/94	Vinyl Garment Bags.
Sequins International Inc.	60–01 31st Avenue, Woodside, NY 11377	03/11/94	Sequins, Sequined Textiles and Sequin Trims.
James A. Murphy & Sons, Inc.	1879 County Street, South Attleboro, MA 02703	03/15/94	Jewelry.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: March 17, 1994.

Pedro R. Garza,

Deputy Assistant Secretary for Program Operations.

[FR Doc. 94–7121 Filed 3–24–94; 8:45 am]

BILLING CODE 3510–24–M

International Trade Administration

[A–427–812]

Final Determinations of Sales at Less Than Fair Value: Calcium Aluminate Cement, Cement Clinker and Flux From France

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: March 25, 1994.

FOR FURTHER INFORMATION CONTACT: V. Irene Darzenta or Katherine Johnson, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–6320 or 482–4929, respectively.

Final Determinations

We determine that calcium aluminate (CA) cement, cement clinker and flux from France are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Scope of Investigations

The products subject to these investigations constitute two classes or kinds of merchandise: (1) CA cement and cement clinker, and (2) CA flux. The products covered by these investigations include CA cement, cement clinker and flux, other than white, high purity CA cement, cement clinker and flux. These products contain by weight more than 32 percent but less than 65 percent alumina and more than one percent each of iron and silica.

CA cement/cement clinker and CA flux have significantly different physical characteristics and end uses. CA cement is a specialty hydraulic non-portland cement used for construction purposes. CA cement clinker is the primary material used as a binding agent in the production of CA cement. CA flux is used primarily as a desulfurizer and/or cleaning agent in the steel manufacturing process. CA clinker produced for sale as flux cannot be used to produce CA cement, and CA clinker used to produce CA cement cannot be used as a flux in the production of steel.

CA flux has a chemical composition distinct from CA cement clinker. CA cement clinker contains the hydraulic mineral mono-calcium aluminate, which gives it a molar ratio of lime to alumina of approximately 1:1. In contrast, CA clinker sold as a flux does not contain mono-calcium aluminate; it contains the complex mineral $C_{12}A_7$ ($12CaO * 7A1_2O_2$), which gives it a molar ratio of lime to alumina of approximately 2:1. This higher lime to alumina ratio gives the CA clinker sold as a flux a lower melting point than CA cement, and also results in extra lime which can bond with sulfur and other impurities in molten steel. Although CA clinker sold as flux has some hydraulic properties, it hydrates too quickly to be used for those properties.

These products are currently classifiable under the following

Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 2523.30.0000 (for aluminous cement) and 2523.10.0000 (for cement clinker and flux). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these investigations remains dispositive.

Period of Investigations

The period of investigation (POI) is October 1, 1992, through March 31, 1993.

Case History

Since the publication of the notice of preliminary determinations on November 3, 1993 (58 FR 58683), the following events have occurred.

On October 29, 1993, the respondent, Lafarge Fondu International (LFI) and Lafarge Calcium Aluminates, Inc. (LCA) (collectively Lafarge), and the petitioner, Lehigh Portland Cement Company (Lehigh), both requested that the Department postpone the final determinations in these investigations. Pursuant to these requests, the Department postponed the final determinations until March 18, 1994 (58 FR 60843, November 18, 1993).

On November 8, 1993, Lafarge submitted supplemental responses to the Department's questionnaire for CA flux sales.

On November 15, 1993, petitioner requested that the Department collect data on respondent's home market sales of CA flux, objecting to respondent's use of constructed value (CV) based on differences-in-merchandise (difmer) adjustments calculated inclusive of home market bagging costs. (See Comment 11 in the "Interested Party Comments" section of this notice.) Subsequently, on November 24, 1993, the Department requested that respondent provide such data.

On November 15 and 24, 1993, respectively, Lafarge and Lehigh requested a public hearing. On December 14, 1993, the Department issued a second set of supplemental questionnaires for sales of both classes or kinds of merchandise. Respondent submitted home market sales data for flux and responses to the Department's second set of supplemental questionnaires on December 23 and 29, 1993, respectively. On January 3, 1994, respondent submitted certain corrections to the cost and sales data reported in its previous questionnaire responses.

The Department conducted verification of the cost and sales responses of LFI and LCA from January 10 through January 20, 1994, in Paris, France and Chesapeake, Virginia.

Petitioner and respondent filed case and rebuttal briefs on February 14 and 18, 1994, respectively. On February 16, 1994, the parties withdrew their requests for a public hearing which was scheduled to take place on February 18, 1994.

Such or Similar Comparisons

Regarding the CA cement and cement clinker class or kind of merchandise, we have determined that the products covered by this investigation constitute two "such or similar" categories of merchandise: CA cement and CA cement clinker. We made fair value comparisons on this basis. Since this investigation was initiated during a period in which certain simplification procedures were in effect (see the preliminary determination), we conducted the home market viability test based on the class or kind of merchandise, rather than on the such or similar category. In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating foreign market value (FMV), we compared the volume of home market sales of CA cement and cement clinker to the volume of third country sales of CA cement and cement clinker, in accordance with section 773(a)(1)(B) of the Act, and determined that the home market was viable for the CA cement and cement clinker class or kind. During the POI, CA cement clinker was the only product within the cement class or kind which was imported into the United States from France. Because there were no sales of such or similar merchandise (i.e., clinker) in the home market during the POI to compare to U.S. sales, we made comparisons on the basis of CV (see the "Fair Value Comparisons" section of this notice), in accordance with section 773(a)(2) of the Act.

Regarding the CA flux class or kind of merchandise, we determined that the products covered by this investigation comprise a single "such or similar" category of merchandise and that the home market was viable. Where there were no sales of identical merchandise in the home market during the POI to compare to U.S. sales, we made similar merchandise comparisons on the basis of size (i.e., degree of crushing/screening), in accordance with section 773(a)(1) of the Act (see the "Fair Value Comparisons" section of this notice). We made adjustments for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

Fair Value Comparisons

To determine whether sales of CA cement and cement clinker, and CA flux from France were made at less than fair value, we compared United States Price (USP) to the FMV, as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We made revisions to respondent's reported data, where appropriate, based on verification findings. For those unreported U.S. cement sales which respondent claimed were made pursuant to certain graduated requirements contracts effective prior to the POI, but for which respondent could not provide documentary evidence substantiating its claim, we based our analysis on best information available (BIA), in accordance with 19 CFR 353.37. As BIA, we used the highest, non-aberrational margin calculated for any of respondent's reported U.S. sales of cement. (See Comment 1 in the "Interested Party Comments" section of this notice.)

United States Price

All of Lafarge's U.S. sales to the first unrelated purchaser took place after importation into the United states. Therefore, we based USP on exporter's sales prices (ESP), in accordance with section 772(c) of the Act.

For ESP sales of cement, we included in our final analysis certain reported sales allegedly made under an exclusive supply contract, using the reported, verified date of purchase order as the date of sale. (See Comment 2 in the "Interested Party Comments" section of this notice.) For ESP sales of flux, we included in our final analysis certain reported sales made under a contract which expired but which respondent claimed had been subsequently renewed prior to the POI, but for which respondent could not provide documentary evidence substantiating that claim. For these sales, we used the verified date of purchase order (or date of invoice where the purchase order date was unavailable) as the date of sale. (See Comment 9 in the "Interested Party Comments" section of this notice.) Furthermore, we excluded certain reported flux shipments made in October 1992 pursuant to a contract effective prior to the POI, the price terms of which were modified in November 1992. (See Comment 10 in the "Interested Party Comments" section of this notice.)

We calculated USP based on packed or bulk, ex-U.S. warehouse or delivered prices to unrelated customers in the United States. For sales of both classes or kinds of merchandise, we made

deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. brokerage and handling (including harbor maintenance and customs processing fees), unloading costs, and U.S. inland freight charges (including loading, freight to processors' warehouses/transfer freight to warehouses, demurrage and freight to customer charges, where applicable). For sales of CA flux, we recalculated foreign inland freight, foreign brokerage and handling, ocean freight and U.S. inland freight expenses to correct minor clerical errors found at verification.

For sales of both classes or kinds of merchandise, we also deducted direct selling expenses including credit and product liability premiums. We recalculated credit expenses to account for discounts, where applicable, and to correct minor clerical errors found at verification with respect to the reported weighted-average short-term interest rate and the reported payment or shipment dates for certain transactions. We also recalculated credit for those sales that had missing payment dates. For those missing payment dates, we used, as BIA, the date of the final determination as the date of payment. In addition, we reclassified premiums for product liability insurance as direct selling expenses, and deducted them from USP accordingly. (See Comment 15 in the "Interested Party Comments" section of this notice.)

For sales of both classes or kinds of merchandise, we also deducted indirect selling expenses (including pre-sale warehousing costs incurred in the United States and selling expenses incurred in France on the merchandise exported to the United States for further manufacturing). U.S. indirect selling expenses were recalculated to exclude certain administrative expenses which were determined to be more appropriately classified as general and administrative (G&A) expenses. (See Comment 18 in the "Interested Party Comments" section of this notice.) We also deducted imputed inventory carrying costs for the period between production of the clinker/flux in France and shipment of the finished cement/processed flux to the customer in the United States. For sales of CA cement, we recalculated inventory carrying costs for the period between production of the clinker in France and the start of production of the finished cement in the United States, using the verified weighted-average short-term interest rate in France for the POI. (See Comment 4 in the "Interested Party Comments" section of this notice.)

For sales of CA cement, we also deducted rebates, discounts and warranty expenses, where applicable. For sales of CA flux, we also deducted commissions, where appropriate.

In addition, for both classes or kinds of merchandise, we made deductions, where appropriate, for all value added in the United States pursuant to section 772(e)(3) of the Act. The value added consists of the costs associated with further manufacturing the imported products, including a proportional amount of any profit related to further manufacturing. We calculated profit attributable to further manufacturing in the United States by deducting from the sales price all applicable costs incurred in producing the further manufactured products. We then allocated the total profit proportionally to all components of cost. We deducted only the profit attributable to the value added in the United States. In determining the costs incurred to produce the further manufactured products, we included: (1) The costs of manufacture (COM); (2) movement and packing expenses; (3) selling, general and administrative (SG&A) expenses; and (4) interest expenses.

For both classes or kinds of merchandise, we relied on the submitted further manufacturing costs except in certain instances where the costs were not appropriately quantified or valued. We reclassified certain administrative expenses which were reported as indirect selling expenses as G&A expenses. We also recalculated financial expenses to exclude the claimed adjustment for short-term interest income. (See Comments 18 and 19, respectively, in the "Interested Party Comments" section of this notice.)

For CA flux sales, we made an adjustment to U.S. price for the value-added tax (VAT) paid on the comparison sale in France. In *Federal-Mogul Corporation and The Torrington Company* v. *United States*, Slip Op. 93–194 (CIT October 7, 1993), the Court of International Trade (CIT) rejected our revised implementation of the Act's instructions on taxes and prohibited us from applying a purely tax neutral margin calculation methodology. Accordingly, we have again changed our practice, as instructed by the CIT, and adjusted USP for tax by multiplying the home market tax rate by the U.S. price at the point in the chain of commerce of the U.S. merchandise that is analogous to the point in the home market chain of commerce at which the foreign government applies the home market consumption tax.

In this investigation, the tax levied on the subject merchandise in the home market is 18.6 percent. We calculated the appropriate tax adjustment to be 18.6 percent of USP net of adjustments reflected on the invoice at the time of sale (which, in this case, is the point in the chain of commerce of the U.S. merchandise that is analogous to the point in the home market chain of commerce at which the foreign government applies the home market consumption tax), and added this amount to the USP. We also calculated the amount of the tax adjustment that was due solely to the inclusion of price deductions in the original tax base (*i.e.*, 18.6 percent of the sum of any adjustments, expenses and charges that were deducted from the tax base). We deducted this amount from the net USP after all other additions and deductions had been made. By making this additional tax adjustment, we avoid a distortion that would cause the creation of a dumping margin even when pre-tax dumping is zero.

Foreign Market Value

For CA cement and cement clinker, we based FMV on the CV data submitted for cement clinker because cement clinker was the only such or similar product within the cement and clinker class or kind which was imported into the United States during the POI, and there were no sales of this product in the home market or to unrelated customers in third countries during the POI. (See the "Such or Similar Comparisons" section of this notice.) For CA flux, we based FMV on home market sales prices because we found the home market to be viable for flux sales during the POI, and because the difference-in-merchandise adjustments between the flux products sold to the United States and those sold in the home market do not exceed 20 percent. (See Comment 12 in the "Interested Party Comment" sections of this notice.)

CV-to-Price Comparisons

We calculated CV for cement clinker based on the sum of Lafarge's cost of materials, fabrication, general expenses, U.S. packing costs and profit. We relied on the submitted CV information, except in the following instances where the costs were not appropriately quantified or valued:

(1) We adjusted material costs for minor errors presented at verification. We also increased material costs for foreign exchange losses incurred when reporting raw materials. (See Comment 21 in the "Interested Party Comments" section of this notice.)

(2) We adjusted variable overhead to correct minor errors found at verification.

(3) We did not allow the annualization of fixed costs as we had done in the preliminary determination because respondent incorrectly reported labor costs as part of annualized fixed costs, rather than as variable costs for the POI in accordance with the Department's instructions; and because respondent failed to provide an itemization of fixed and variable costs that would allow us to appropriately reclassify labor costs from annualized fixed costs to POI variable costs. As BIA, we used the fixed costs, including the labor costs, incurred during the POI. (See Comment 22 in the "Interested Party Comments" section of this notice.)

(4) We revised the COM reported to include an amount for depreciation on research and development (R&D) assets which was not originally reported. (See Comment 20 in the "Interested Party Comments" section of this notice.)

(5) We recalculated financial expenses to exclude the claimed adjustment for short-term interest income. (See Comment 19 in the "Interested Party Comments" section of this notice.)

(6) We also recalculated home market selling expenses on a class or kind basis. (See Comment 6 in the "Interested Party Comments" section of this notice.)

In accordance with section 773(e)(1)(B) (i) and (ii) of the Act we included in CV the recalculated general expenses since these expenses were greater than the statutory minimum of ten percent of the COM. We revised respondent's reported profit calculation to reflect verification findings. (See Comment 8 in the "Interested Party Comments" section of this notice.) Since this amount was greater than the statutory minimum of eight percent of the sum of the COM and general expenses, we used the recalculated profit for CV purposes.

We deducted from CV home market direct selling expenses. We also deducted home market indirect selling expenses capped by the amount of U.S. indirect selling expenses attributable to the cement clinker imported into the United States and further manufactured into finished cement, in accordance with 19 CFR 353.56(b)(2).

Price-to-Price Comparisons

For sales of flux, we calculated FMV based on packed, ex-factory or delivered prices to unrelated home market customers. We excluded from our analysis those sales made to home market customers on a test basis because they were in unusually small quantities, rather than in the usual commercial quantities, in accordance with 19 CFR 353.46(a)(1). We also excluded from our analysis those sales to a home market customer which were destined for a third country market. (See Comment 16 in the "Interested Party Comments" section of this notice.) We made deductions, where appropriate, for rebates. We also deducted home market packing costs which were recalculated to exclude the costs of bagging and G&A expenses. (See Comments 11 and 12 in the "Interested Party Comments" section of this notice.)

Pursuant to section 773(a)(4)(B) and 19 CFR 353.56(a)(2), we also deducted direct selling expenses including bagging costs, credit, technical service expenses and product liability premiums. (See Comments 11, 13 and 15 in the "Interested Party Comments" section of this notice.) We recalculated credit expenses to exclude VAT from the gross unit prices and to correct minor clerical errors found at verification with respect to the credit periods reported for certain transactions. (See Comment 14 in the "Interested Party Comments" section of this notice.) We revised respondent's reported technical service expense calculation, treating the verified travel expense portion of the calculation as a direct expense and the verified salary portion as an indirect selling expense. (See Comment 13 in the "Interested Party Comments" section of this notice.) In accordance with the decision in Ad Hoc Committee of AZ–NM–TX–FL *Producers of Gray Portland Cement* v. *United States*, Slip Op. 93–1239 (Fed. Cir., January 5, 1994), we made a circumstance-of-sale adjustment for post-sale home market movement expenses, namely inland freight and loading charges. We also deducted from FMV home market indirect selling expenses, including inventory carrying costs. The deduction for home market indirect selling expenses was capped by the sum of U.S. indirect selling expenses and U.S. commissions attributable to the flux imported into the United States and further manufactured, in accordance with 19 CFR 353.56(b) (1) and (2). Where there was no U.S. commission applicable to a particular U.S. flux sale, we offset the indirect selling expenses in the United States with a corresponding deduction for indirect selling expenses in the home market, capped by the total indirect selling expenses incurred on the U.S. sale in the manner described above.

We included in FMV the amount of the VAT collected in the home market. We also calculated the amount of the tax that was due solely to the inclusion of price deductions in the original tax base (i.e., 18.6 percent of the sum of any adjustments, expenses, charges and offsets that were deducted from the tax base). We deducted this amount after all other additions and deductions had been made. By making this additional tax adjustment, we avoid a distortion that would cause the creation of a dumping margin even when pre-tax dumping is zero.

We also made an adjustment for physical differences in the merchandise, in accordance with 19 CFR 353.57. We revised the reported difmer amount to reflect only the verified variable COM, excluding the reported costs of bagging associated with the home market products, and associated G&A expenses and profit. (See Comments 11 and 12 in the "Interested Party Comments" section of this notice.)

Verification

As provided in section 776(b) of the Act, we conducted verification of the information provided by Lafarge by using standard verification procedures, including the examination of relevant sales, cost and financial records, and selection of original source documentation.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York.

Interested Party Comments

Comment 1

Petitioner argues that certain unreported U.S. CA cement sales alleged by Lafarge to have been made under graduated requirements contracts effective prior to the POI should be included in the Department's final analysis. Petitioner notes that at verification respondent could not provide the Department with any contemporaneous documentation regarding the acceptance of the essential terms of sale by the customers associated with these contracts. Petitioner contends that, despite the fact that respondent believes that these shipments were based on contracts entered into before the POI, the Department could not verify the existence or terms of these alleged contracts. Petitioner also maintains that respondent refused to provide the relevant data requested by the Department with regard to this issue.

Petitioner further argues that respondent never demonstrated that the alleged contracts governing these CA cement shipments were made prior to the POI. According to petitioner, the alleged contracts cover time periods much earlier than the POI and in fact constitute unilateral sales proposals made by Lafarge which are not evidence of a binding commitment between the parties as to quantity and price. According to petitioner, Lafarge also has not demonstrated that these shipments were not in excess of the quantity requirements stipulated in the alleged contracts.

Petitioner believes that, as BIA, the Department should apply a rate of 198.10 percent, the highest margin alleged in the petition, to account for these sales.

Respondent maintains that for these CA cement sales the Department should use the date of the customers' acceptance of the graduated requirements pricing proposals as the date of sale and exclude these sales from its final analysis. Respondent believes its pricing proposals were accepted by the customers when the customers placed initial purchase orders at the prices specified in the proposals. At the time these orders were placed, respondent claims the parties had already orally reached an agreement with LCA regarding the percentage of their requirements they were committed to purchase from LCA in order to qualify for each price level specified in the proposals; the orders provided confirmation of each customer's prior acceptance of LCA's pricing proposal. Because these initial orders were dated prior to the POI, respondent argues that the date of sale for the shipments made during the POI pursuant to these proposals also fell outside the POI and, therefore, these shipments were properly not reported to the Department.

Respondent notes, however, that, should the Department disagree with its reasoning and determine that the shipments pursuant to graduated requirements contracts should be included in its analysis, there is no basis for the Department to make adverse inferences or use "punitive" BIA. Respondent asserts that it fully disclosed the nature of its graduated requirements contracts to the Department from the start of this case, and it had no reason to believe that it should provide further information about those shipments in the form of a sales listing. Respondent further notes that it provided a summary of the quantity and value of the shipments made during the POI under the graduated requirements contracts in its December 29, 1993, supplemental questionnaire response, and that, at verification, Department verifiers retained as an exhibit a listing of all the POI invoices generated under these contracts with related pricing and other sales data. Respondent argues that, if the Department decides to include these sales in the final determination, the sales data examined at verification should be used to allow proper analysis of these sales.

DOC Position

We agree with petitioner in part. Despite several requests for information in our questionnaires, Lafarge did not provide documentation regarding customers' acceptance of the graduated requirements pricing proposals. For example, Lafarge did not provide any of the "initial" orders allegedly placed pursuant to these graduated requirements pricing proposals. In addition, respondent did not offer any indication of the date on which these "initial" orders were placed for purposes of establishing date of sale for these sales. Furthermore, respondent could not provide at verification any contemporaneous documentation or other sufficient evidence regarding acceptance of the terms of sale by customers associated with the subject graduated requirements contracts or indicating a "meeting of the minds" between the parties with respect to price and quantity, despite the Department's repeated requests for such evidence. The POI invoices that we examined at verification that were allegedly generated pursuant to the pricing proposals and "initial" orders gave no indication of association with the pricing proposals or "initial" orders, and respondent provided no other documentation that would establish such a connection.

Lafarge submitted in its December 29, 1993, response sample pricing proposals associated with the graduated requirements customers in question. At verification, we were able to examine in detail only one of those pricing proposals. This proposal, dated January 9, 1991, was specifically for 1991 (all the prices and discounts mentioned referenced 1991 only) and was silent on the effective period of the terms it quoted. We also reviewed a letter that was dated January 20, 1994, the last day of verification, and was faxed to the respondent on that day by the customer in question. This letter attempted to show that the January 9, 1991, pricing proposal constituted the date of the agreement regarding the essential terms of sale for all sales made to that customer after that date. This letter also discussed renewal of the pricing arrangement. However, not only was this letter unclear as to exactly what kind of agreement the parties had reached pursuant to the proposal, but it also did not indicate when renewal was discussed. In accordance with the Department's practice, the date of any such renewal would constitute a new date of sale. Also in accordance with our practice, we required some form of documentation attesting to the date of renewal, yet no documentation apart from the faxed letter was provided. Lafarge was also unable to provide any such documentation for the other customers in question.

Without some documentary evidence of a renewal prior to the POI, we cannot assume that the terms of the January 1991 pricing proposal were in effect during the POI. See Final Determination of Sales at Less Than Fair Value: Certain Forged Steel Crankshafts from the Federal Republic of Germany, 52 FR 28170, 28172 (July 28, 1987) (Crankshafts from the FRG); and Final Determination of Sales at Less Than Fair Value: Gray Portland Cement and Clinker from Mexico, 55 FR 29244, 29248 (July 18, 1990) (Gray Portland Cement from Mexico). Because we have no such evidence, we have determined that the dates of sale for the shipments at issue are within the POI. Accordingly, we have included them in our final dumping analysis. We do not think, however, that the pricing information contained in the invoice listing referred to by respondent is appropriate for use in our dumping analysis. This data was only submitted at verification to support the reconciliation of Lafarge's reported POI sales with its financial statements (information previously submitted in its responses). For purposes of making CV-to-price comparisons in our dumping analysis, this listing constitutes new information under 19 CFR 353.31(a)(i), and was therefore not timely submitted. It is not the Department's practice to accept new information at verification, because it leaves no opportunity for petitioners to analyze the sales reporting and provide deficiency questions, and no opportunity for petitioners to analyze and comment on these sales. In addressing this issue previously, we have stated:

> The untimely submission of key information * * * precluded the Department from conducting a reasonable and thorough analysis of this information prior to the verification, just as petitioners were unable to comment on the new [information] * * * The purpose of verification is to establish the accuracy of a response rather than to reconstruct the information to fit the requirements of the Department.

Final Result of Sales at Less Than Fair Value; Light-Walled Welded Rectangular Carbon Steel Tubing from Argentina, 54 FR 13913 (April 6, 1989); Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products and Cold-Rolled Carbon Steel Flat Products from the Netherlands, 58 FR 37199, 37203 (July 9, 1993).

Even if this listing had been submitted seven days prior to

verification, in accordance with 19 CFR 353.31(a)(i), it did not contain sufficient data for purposes of dumping analysis. Therefore, because we did not have complete sales information on the record to properly analyze these sales, we used BIA.

However, we do not think that use of the petition rate as BIA for these sales, as suggested by petitioner, is warranted. In this case, we are using partial BIA because Lafarge has provided responses to our questionnaires. When we resort to partial BIA, it is our practice to use the highest non-aberrational margin based on respondent's reported sales. This is an adverse figure, yet is based on the respondent's calculated margins. Therefore, we have used as BIA for these sales the highest, non-aberrational margin calculated for any of respondent's reported U.S. sales of cement.

Comment 2

Petitioner contends that certain reported U.S. cement sales alleged to have been made under an exclusive supply contract dated outside the POI should be included in the Department's analysis. Petitioner argues that the Department was unable to verify that these sales were in fact made pursuant to a Master Agreement that Lafarge claims was an exclusive supply contract. Accordingly, petitioner maintains that respondent failed verification with respect to these sales. Furthermore, petitioner contends that, even if the Department had been able to verify these sales, respondent never had an exclusive supply contract with this particular customer. Petitioner asserts that the Master Agreement is neither "exclusive" nor a "contract." Therefore, petitioner argues that the Department should determine that the appropriate date of sale for these particular sales is the date of invoice, which is within the POI, and the Department should include these sales in its dumping calculation.

Respondent maintains that the Department should consider the date of the Master Agreement as the date of sale for the subject sales. Respondent argues that the blanket purchase orders issued by the customer prior to the POI indicates the customer's commitment to purchase its requirements from the respondent for specific products at the specific prices set by the Master Agreement.

DOC Position

We agree with petitioner. In our deficiency questionnaire of December 14, 1993, the Department specifically asked the respondent to support its assertion regarding the "exclusivity" of the Master Agreement. Respondent, in its December 29, 1993, response, could neither demonstrate that the Master Agreement was "exclusive," nor what quantity of the subject merchandise the respondent was agreeing to sell. Rather, Lafarge merely stated that the customer purchased all its requirements for certain cement products from it and that the "volume commitment" mentioned in the Master Agreement had been agreed to beforehand. Since we have no documentation demonstrating that a "meeting of the minds" regarding both quantity and price occurred before the POI, we cannot assume, based on respondent's word, that the Master Agreement is a requirements contract for purposes of establishing date of sale. (*See* Crankshafts from the FRG and Gray Portland Cement from Mexico.) Accordingly, we have determined the appropriate date of sale for these particular sales to be the date of purchase order, and we have included them in our final dumping calculations.

Comment 3

Petitioner argues that the Department should reverse its preliminary determination that CA cement and CA cement clinker constitute two such or similar categories. According to petitioner, the Department's determination was based on the incorrect premises that: (1) CA cement is not like CA cement clinker in the purposes for which used, and (2) in all past cases involving intermediate and finished products the Department has determined that there should be two such or similar categories. Petitioner contends that there is no question that CA cement and CA cement clinker constitute only one such or similar category pursuant to section 1677(16)(C) of the antidumping statute. According to petitioner, CA cement clinker is like the CA cement it is used to produce, and the difference-in-merchandise adjustment that would be required to make fair value comparisons between home market sales of CA cement and U.S. sales of clinker would be well below the Department's 20 percent difmer guideline. Petitioner further argues that because there is no data on the record for home market sales of CA cement to calculate FMV, the Department should use BIA to determine a margin for Lafarge's sales of both CA cement and CA cement clinker. Petitioner believes that, as BIA, the Department should use 41.23 percent, which is the lowest margin alleged in the petition.

Respondent does not believe that there is any reason for the Department to revisit its decision that CA cement and CA cement clinker are different such or similar categories at this late stage in the investigation. Respondent argues that it would be unfair for the Department to penalize it for failing to report information that the Department decided not to request. Furthermore, respondent contends that the statute does not allow the Department to use BIA when the information at issue was never requested.

DOC Position

We agree with respondent. It was decided early on in these investigations that CA cement and cement clinker constituted two such or similar categories of merchandise in accordance with the definition of similar merchandise under section 771(16)(B)(ii) and (C)(ii) of the Act, which states that the component materials and uses of the products must be "like." (*See* June 15, 1993, Memorandum from Richard W. Moreland to Barbara R. Stafford Re Such or Similar Categories and attached Memorandum from Stafford to Moreland). In this case, while cement and clinker may be made of similar materials, they are not used for the same purposes. Clinker is used to make cement, and cement is used to bind things together or to create some structure or form. Clinker requires further processing to be like cement in the purposes for which it is used. For these reasons we have held cement and clinker to constitute different such or similar merchandise categories in this and past cement cases. Moreover, contrary to petitioner's assertion, the component materials and uses of products within the class or kind of merchandise subject to investigation are the determinants in establishing categories of such or similar merchandise: The 20 percent difmer rule is not considered by the Department in establishing such or similar categories.

Comment 4

Respondent maintains that in the preliminary determination the Department incorrectly deducted from the USP as an indirect selling expense, inventory carrying costs (ICC) based on an inventory period including the time between clinker production in France and production of the finished cement in the United States. Respondent claims that it did not sell clinker to an unrelated party in the United States, but rather to its U.S. subsidiary for further processing into cement. Therefore, the clinker in this case is work-in-process inventory, and the period between the production of the intermediate clinker

product and the completion of the finished cement product is part of the production period. Respondent maintains that the Department ordinarily imputes an ICC for finished goods inventory and almost never imputes ICC on work-in-process inventory, except for large, made-to-order goods that are produced as discrete projects. To support its arguments, respondent cites among other cases the Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea (58 FR 15467, March 23, 1993) (DRAMs from Korea) and Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review (55 FR 26,255, June 27, 1990) (CTVs from Korea). Furthermore, citing Final Determination of Sales at Less Than Fair Value: Offshore Platform Jackets and Piles from Japan (51 FR 11788, April 7, 1986) (OPJPs from Japan) and the Final Determination of Sales at Less Than Fair Value: Mechanical Transfer Presses from Japan (55 FR 335, January 4, 1990) (MTPs from Japan), respondent maintains that in the rare instances in which the Department has imputed ICC on work-in-process inventory, it classifies those costs as part of the COM, not as selling expenses.

Petitioner contends that ICC must be calculated to include the time CA cement clinker is produced in France until the time it is further manufactured into cement in the United States. Petitioner argues that both CA clinker and cement will be subject to the scope of any order that may be issued in this case and, therefore, CA clinker cannot be considered work-in-process, as respondent suggests.

DOC Position

We agree with petitioner. The Department's general practice in all further manufacturing cases has been to begin the inventory carrying period from the time that the product comes off of the production line. (See e.g., Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rods from France (58 FR 68865, December 29, 1993) (Wire Rods From France). In this case, we are calculating ICC for the imported product, which is the clinker that is further manufactured into finished cement. We distinguish this case from that of CTVs from Korea, where the product imported into the United States was the finished merchandise; and OPJPs from Japan and MTPs from Japan, where the products were large and made-to-order, unlike the subject merchandise in the instant investigation; and from DRAMs from Korea, where we made no adjustment regarding the imported merchandise only where it merely constituted parts of larger and considerably more complicated modules. Therefore, we have imputed ICC in this case inclusive of the period between production of the clinker in France and shipment to the first unrelated customer in the United States, and have adjusted USP accordingly. Moreover, for the portion of the ICC costs which reflect the period between production of the clinker in France and the start of production of the finished cement in the United States, we recalculated the reported ICC using the short-term interest rate prevailing in France during the POI.

Comment 5

Respondent argues that the Department should use the U.S. warehousing costs included in the reported U.S. indirect selling expenses for CA cement sales. Contrary to what is suggested in the sales verification report, Lafarge maintains that the reported pre-sale warehousing costs for one warehouse are consistent with the prices shown in the warehousing contract examined at verification, and the pre-sale warehousing costs included in the reported indirect selling expenses were based on the actual costs incurred and paid by Lafarge, not on the per ton cost stated in the contract.

DOC Position

We agree. Upon further examination of the documentation reviewed at verification, we noted that the verified per unit U.S. indirect selling expenses, reported inclusive of pre-sale warehousing costs, were based on actual costs incurred. Thus, we have deducted from USP the reported pre-sale warehousing costs as indirect selling expenses.

Comment 6

Petitioner maintains that indirect selling expenses included in the CV of CA clinker should be recalculated to include indirect selling expenses allocated to CA cement as shown in Exhibit 6 of petitioner's case brief because clinker is of the same class or kind of merchandise as cement.

Respondent argues against such a recalculation because the channels of distribution and sales process for CA clinker differ substantially from those of CA cement. Because the CV of clinker is intended to provide a surrogate for a home market sales price for clinker based on the costs and expenses that would be incurred in producing and selling clinker in the home market, Lafarge appropriately included in CV only the selling expenses that would be incurred in selling clinker.

DOC Position

We disagree with respondent. Section 773(e)(1)(B) of the Act provides that CV should include, among other things, "an amount for general expenses * * * equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise under consideration." We have recalculated indirect selling expenses to include home market indirect selling expenses for cement using verified information on the record. We consider cement indirect selling expenses to be representative of selling expenses of the general class or kind of merchandise, i.e., all CA products sold within the home market country.

Comment 7

Petitioner asserts that the Department should make an adjustment to the G&A expense reported in the CV for clinker to include the amortization of patents and trademarks which respondent had not included in the reported G&A amount.

Respondent argues that the amortization of patents and trademarks was included in the reported G&A expenses.

DOC Position

We agree with respondent. Upon review of the verification exhibits we found that the reported depreciation costs included the amortization of patents and trademarks. (See Exhibit 14 and Cost Verification Report at 12).

Comment 8

Petitioner argues that, for purposes of calculating the CV for clinker in the final determination, the Department should use the BIA profit ratio that the Department calculated for the preliminary determination. Petitioner does not believe the Department should use the reported profit ratio because this calculation includes data on sales of non-subject merchandise. Petitioner argues that this profit ratio expands beyond the CA cement and cement clinker class or kind and, therefore, should not be used. Petitioner further maintains that in past cases the Department has consistently rejected the use of profit based on merchandise other than of the class or kind subject to investigation.

Respondent contends that the antidumping statute does not require the Department to use the profit on the "class or kind" of merchandise in its CV

calculations. Rather, respondent states that the statute directs the Department to use the profit rate on the "general class or kind," indicating an intent that the Department have flexibility in choosing the appropriate profit rate, and not be limited solely to the profit on the merchandise comprising the "class or kind."

DOC Position

We agree with respondent. In accordance with section 773(e)(1)(B), we have used the verified profit rate for all CA products, including the subject merchandise, sold in France because it represents the profit experience on sales of the general class or kind of merchandise in the home market.

Comment 9

Petitioner contends that certain reported U.S. flux sales made under an expired master order allegedly renewed prior to the POI should be included in the Department's analysis as sales made during the POI. Petitioner argues that the master order expired prior to the POI and was not renewed prior to the POI as respondent claims. Despite respondent's claim that prior to the POI the parties "evidenced a clear intent to continue the contract under the terms specified in the expired master order" but failed to renew the contract due to internal delays, there is no evidence on the record to support respondent's position. Petitioner argues that implicit renewal of the contract is not legally binding (i.e., there was no binding agreement between the parties as to any essential terms of sale at the time shipments of CA flux were made to this customer during the POI). According to petitioner, any shipments made to this customer during the POI were individual spot sales with dates of sale established by the date of the invoices issued for particular shipments.

Respondent argues that the Department should use the date of the master order as the date of sale for sales made pursuant to this contract (which it claims was renewed prior to the POI), and exclude them from the dumping analysis in the final determination. Although the original contract expired prior to the POI, Lafarge claims that the customer continued to purchase from LCA after that date in accordance with the sales terms set in the original contract. Moreover, respondent maintains that the orders placed by the customer during the POI continued to reference the purchase order numbers from the expired master order. According to respondent, the customer indicated its intent to re-issue the master order, but had not yet done so because of internal delays. Based on these facts, respondent maintains that the shipments to this customer during the POI continued to be governed by the terms of the original master order even if there was no formal written agreement to that effect.

DOC Position

We agree with petitioner. The effective date of the subject master order was prior to the POI. At verification, LCA could not provide any documentation indicating renewal of the subject master order prior to the POI. Without some documentary evidence of a renewal of the master order prior to the POI, we cannot assume, based on respondent's word, that the essential terms enumerated in the original master order (which expired three months prior to the POI) governed the subject flux shipments made during the POI. (See Crankshafts from the FRG and Gray Portland Cement from Mexico.) Therefore, we have included these sales in the final determination, using the verified date of purchase order (or date of invoice where the date of purchase order was unavailable) as the date of sale.

Comment 10

Respondent argues that certain reported flux shipments made in October 1992 pursuant to a contract claimed to be effective prior to the POI, but the price terms of which were modified in November 1992, should not be included in our final dumping analysis. Respondent claims that the date of the November 1992 price modification notice should be used as the date of sale for subsequent sales made to this customer during the POI. Therefore, respondent asserts that all shipments made after the November price modification should be included in the Department's final dumping calculations, while those POI shipments made prior to the November price modification should be excluded from the final determination.

DOC Position

We agree. Respondent reported all sales/shipments of flux to the customer in question pursuant to purchase orders issued during the POI, because (1) it was unable to locate the original master order for that customer allegedly dated prior to the POI and (2) the original price terms changed in November 1992. At verification, although we were unable to locate the original master agreement or blanket purchase order for the subject customer, we did find a "change order" dated November 2, 1992, which stipulated a change in price terms effective on that date. We also examined invoices issued to this customer shortly before and after the November 2 change order date. Based on our examination of these invoices, we found that the invoices confirmed LCA's acceptance of the November 2 change order, because the price per ton LCA charged the customer changed after that date. In accordance with these verification findings, we have included in our final dumping analysis only those shipments made after the November 1992 price modification, using the November 2, 1992, change order date as the date of sale for these shipments.

Comment 11

Respondent argues that CV should be the basis for FMV because including home market bagging costs in variable COM would cause the difmer adjustment to exceed 20 percent. Respondent states that the bags used in the home market are not merely packing for shipment, but rather consumer required packaging; therefore, their costs must be treated as part of COM. Respondent argues that it would be contrary to the Department's past practice to classify these bags as packing "incidental" to the shipment of the merchandise. To support its arguments, respondent cites the FMV Calculations performed pursuant to the 1992 Suspension Agreement in the antidumping duty investigation on gray portland cement and clinker from Venezuela; Final Determination of Sales At Less Than Fair Value: Porcelain-on-Steel Cooking Ware from Taiwan (51 FR 36425, October 10, 1986) (Porcelain-on-Steel Cooking Ware from Taiwan); Final Determination of Sales At Less Than Fair Value: Certain Stainless Steel Cooking Ware from the Republic of Korea (51 FR 42873, November 26, 1986) (Stainless Steel Cooking Ware from Korea); and *Washington Red Raspberry Commission* v. *United States* (859 F.2nd. 898, 905 (Fed. Cir. 1988)).

Furthermore, respondent argues that the bags used for home market packing have a number of special features unrelated to shipment: (1) they have built-in handles that facilitate use of a crane to lift the bag into the ladle or furnace of a steel mill; (2) they are constructed of non-permeable polymer material that protects the flux from contaminants in the steel mill environment and can vaporize in the steel melt without toxic emissions or undesirable residues; and (3) they come in varying sizes which allows the customer to control the amount of flux introduced into the steel melt. Respondent claims that its home market customers specifically order the bagged

product, and they willingly pay more for it because they perceive that it provides additional value.

In addition, respondent maintains that, because the bags are part of the merchandise purchased by home market customers and their costs are significant relative to the overall manufacturing costs of the product, it must set prices taking into account the SG&A and profit attributable to the bagging which are also significant. However, because the Department does not normally include SG&A and profit in packing or difmer adjustments, respondent contends that the Department's comparison of prices for bagged flux sold in the home market and bulk flux exported to the United States will not account for these factors and will therefore be distortive. Therefore, respondent argues that CV should be used instead of home market prices for purposes of calculating FMV for flux sales.

Petitioner argues that bagging costs associated with home market flux sales should not be included in the calculation of the difmer adjustment because they represent packing costs related to shipment of the merchandise to the home market customer, rather than variable COM. Petitioner contends that such an inclusion is contrary to Department policy which states that the difmer adjustment is limited only to costs directly attributable to differences in the physical characteristics of the merchandise and that in this case all physical differences in the CA flux occur before the bagging/packing stage. Petitioner further claims that, contrary to respondent's assertion, the bagging/packing at issue is not consumer packing which serves an advertising, promotional and educational function at the point of sale to the retail end-user. Rather, using bags is another way of handling and shipping flux in bulk quantities. To buttress its argument, petitioner cites Final Determination of Sales at Less Than Fair Value: Pads for Woodwind Instrument Keys from Italy (58 FR 42295, August 9, 1993) (Pads from Italy), Final Determination of Sales at Less Than Fair Value: Industrial Phosphoric Acid from Israel (52 FR 25440, July 7, 1987) (Phosphoric Acid from Israel); and Preliminary Determination of Sales at Less Than Fair Value: Gray Portland Cement and Clinker from Venezuela (56 FR 56390, November 4, 1991) (Gray Portland Cement and Clinker from Venezuela). Petitioner claims that both respondent's CA flux marketing expert in France and petitioner's CA flux marketing expert in the United States agree that when a customer does not have a dedicated bulk storage silo system, the CA flux must be shipped to that customer in bags. Petitioner also contends that respondent's claims that the design of its bags adds value to the customer are not relevant to the determination of whether the bagging costs can be deducted as a packing expense.

Petitioner further argues that respondent's cite to the suspension agreement concerning Gray Portland Cement and Clinker from Venezuela where the Department treated bagging costs as part of COM for purposes of calculating an FMV at or over which a Venezuelan cement producer/exporter would have to sell in the United States is not relevant because calculation of a difmer adjustment was not at issue in that investigation. Petitioner points out that in the Venezuelan cement investigation the Department made fair value comparisons of bulk cement sold to the United States with cement sold in Venezuela in 50 to 100 pound sacks, but did not make a difmer adjustment for packing/bagging. Instead, it adjusted for home market bagging costs by deducting them from FMV and adding the U.S. packing costs to FMV pursuant to its normal practice.

In addition, petitioner notes that the normal packing adjustment in this case would include all fixed costs as well as variable costs of bagging/packing and thus would not distort fair value comparisons as would the inclusion of only variable bagging/packing costs in the difmer adjustment, as respondent suggests. According to petitioner, any claimed price distortions attributable to SG&A and profit associated with bagging/packing will be minimal because Lafarge subcontracts these services (*i.e.*, the fees it pays to subcontractors would cover fixed costs such as G&A expenses, and any selling costs would be included in normal circumstance-of-sale adjustments). Petitioner concludes that, even if packing costs are included in the difmer adjustment, the Department should still use the home market sales data submitted by Lafarge after the preliminary determination rather than CV for fair value comparisons because the U.S. and home market flux products sold during the POI are comparable and the 20 percent difmer guideline is not an inflexible rule.

DOC Position

We agree with petitioner in part. At verification, respondent explained that flux is placed in special bags pursuant to customer orders because home market customers do not have the appropriate facilities for handling and measuring flux for use in their steel production process. Bagged flux is not sold from inventory. Flux can be sold in bulk form without the specialty bags, and is sold as such to the United States and the majority of third country markets. The fact that customers (in the home market or otherwise) have the choice to buy the flux without the special bagging strongly suggests that the bagging is not an integral part of the product covered by the scope of the investigation and, therefore, should not be considered part of variable COM and included in the difmer adjustment. This is in contrast to the situation in *Washington Red Raspberry Commission v. United States*, where the subject merchandise [raspberries] would be unrecognizable and completely unusable without the containers in which it was sold.

Characterizing the bagging costs as variable COM as suggested by respondent is not justifiable in this case. Respondent has not been able to explain to our satisfaction how bagging costs contribute to differences in the physical characteristics of the merchandise, as directed by 19 CFR 353.57. (See also the Department's July 29, 1992 Policy Bulletin (No. 92.2), which states that any difmer adjustment must be tied to such differences.)

The 1986 less than fair value determinations cited by respondent are inapposite. Stainless Steel Cooking Ware from Korea reflected our prior practice regarding the inclusion of difference in consumer packing in making difmer adjustments, which was changed in the 1992 Policy Bulletin cited above. Likewise, in Porcelain-on-Steel Cookware from Taiwan, we merely said that consumer packaging was not a cost incidental to shipment. We did not say that it constituted an integral physical part of the merchandise under investigation.

As noted above, in difmer analysis, we focus only on the differences in physical characteristics of the merchandise. The merchandise in this instance is CA flux. Bagging does not change the physical characteristics of flux and, therefore, it was not included in the difmer calculation. In the FMV Calculations performed pursuant to the Suspension Agreement in Venezuelan cement, we were not examining the differences in the physical characteristics per se of the subject merchandise. Therefore, respondent's reliance on Venezuelan cement is inapposite.

We also do not consider bagging costs as representative of normal packing costs. Rather, it appears to us that Lafarge could not sell the flux to the home market customers without incurring these special bagging costs.

While we agree with petitioner that Pads from Italy is applicable here (in that difmer adjustments are based on the variable cost of manufacture only), petitioner's reliance on Phosphoric Acid from Israel is misplaced, because the bagging for flux is clearly distinguishable from the drums used for packing (and accounted for in packing costs) in Phosphoric Acid from Israel. Therefore, we do not consider bagging in this case to be a pre-shipment expense, but rather a condition of sale. For these reasons, we have treated these bagging costs as direct selling expenses, rather than as part of variable COM or packing for purposes of the final determination. (See March 9, 1994, Memorandum from V. Irene Darzenta to Richard W. Moreland Re. Treatment of Bagging Costs Associated with Home Market Sales of Flux.) Because the difmer that resulted from exclusion of these costs from variable COM was less than 20 percent, we used the reported, verified home market flux sales as the basis for FMV and deducted bagging costs as direct selling expenses from FMV accordingly.

Comment 12

Petitioner states that the difmer adjustment is also incorrect because respondent included fixed costs (i.e., G&A) and profit in its calculation. Petitioner asserts that if the Department includes bagging in the difmer adjustment, it should recalculate the amount of the difmer to include only variable costs. Finally, petitioner maintains that the reported packing expenses, inclusive of bagging costs, should be adjusted to avoid double-counting G&A expenses.

DOC Position

For the reasons stated in the DOC Position to Comment 11 above and in accordance with the Department's normal methodology, we have recalculated the difmer adjustment to exclude bagging costs and include only variable COM. However, upon further review of the documentation examined at verification, we note that the G&A expenses included in the reported packing expenses were not double-counted. Notwithstanding this fact, we have also excluded from the packing adjustment the reported G&A expenses.

Comment 13

Petitioner believes that the claimed adjustment for home market technical service expenses should be denied or reduced. Petitioner maintains that the Department should deny the claimed direct adjustment for home market technical service expenses, because these expenses cannot be directly tied to specific sales made during the POI. According to petitioner, services such as those provided by respondent for purposes of determining new uses for a product in future production aimed at increasing future sales levels constitute goodwill or sales promotion, and as such are not directly related to the sales under consideration. Petitioner also argues that technical service expenses attributable to test sales made during 1992 that are considered to be outside of the ordinary course of trade should be excluded from the adjustment; however, because the Department did not verify data that would permit their exclusion, the Department should deny the adjustment in toto. Nonetheless, if the Department determines that an adjustment is warranted, petitioner urges that it should only deduct the reported travel expenses and not the reported salary expenses comprising respondent's technical service expense calculation because salaries are considered fixed costs which are incurred whether or not the services are provided.

Respondent contends that technical service expenses should be treated as direct selling expenses in accordance with past Department and court decisions. Respondent notes that the technical services performed by LFI in France consist of visits to customers to review and help analyze the customers' test data and to work with the customer to make more efficient use of flux in its steel operations. Lafarge emphasizes that the customer needs to know from the time he makes his purchase that LFI's technical staff will be available to provide this analysis for him on an on-going basis. According to respondent, these types of services are not provided by LCA in the United States because LCA's U.S. flux customers perform this technical service using their own personnel. Respondent argues further that an adjustment for technical service salaries is appropriate where the technical service personnel provide functions that the customer would otherwise have to perform himself.

DOC Position

We agree with respondent in part. Lafarge provides the technical support to its home market customers because they have not yet developed the systems required to perform these services themselves. Without Lafarge's technical support, the customers cannot analyze and make appropriate adjustments in their steel production processes to optimize performance of CA flux in their operations. Given the nature of the steelmaking industry, it is reasonable to believe that, while these technical service expenses could not be directly tied to specific sales of flux, they would not otherwise have been incurred but for the sale of flux.

It is the Department's practice to allow, as a direct selling expense, claims for services rendered in assisting the customer in solving problems with products purchased during the POI to the extent that the variable costs can be segregated from the fixed costs. In general, variable technical service costs include travel expense, while fixed technical service costs include salaries. (See e.g., Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip from Italy, 52 FR 816, January 9, 1987; and Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 18992, May 3, 1989.) Therefore, in accordance with our practice, we have treated travel expenses associated with technical services as direct selling expenses, and we have treated salary expenses as indirect selling expenses and deducted them from FMV accordingly. We made no adjustment to these amounts for expenses related to test sales that may have been made in 1992, because we did not have sufficient information on the record to allow us to do so accurately.

Comment 14

Petitioner claims that the adjustment for home market credit expenses should be denied or reduced. Petitioner believes that an adjustment for this expense should not be permitted because, of the sales verified, over one-quarter had incorrect shipment/payment dates. If the Department allows this expense, petitioner argues that it should be recalculated exclusive of VAT because Lafarge did not incur any credit expense for payment of the VAT.

Respondent maintains that the Department should not deny or reduce home market credit expenses. It argues that the errors found at verification with respect to shipment/payment dates were minor and clerical in nature, and do not have a significant effect on the Department's analysis. According to respondent, by extending credit, Lafarge agrees to forego immediate payment of the total invoice amount which includes the price for the goods and applicable VAT taxes. It, therefore, loses the interest that could have been earned on the total invoice amount. Respondent asserts that the foregone interest represents the opportunity cost of extending credit. Respondent further asserts that, because this opportunity

cost includes foregone interest on VAT, the foregone interest on VAT must be included in the credit adjustment.

DOC Position

We disagree in part with both petitioner and respondent. We have determined that a credit adjustment in general is warranted in this case. The errors found at verification with respect to the credit period reported for two home market transactions were clerical and minor in nature and related to sales made either out of the ordinary course of trade or to a third country which we have excluded from our analysis. (*See* the "Foreign Market Value" section of this notice.) However, we have also determined that there is no statutory or regulatory basis for including VAT in the credit adjustment. While there may be an opportunity cost associated with extending credit on the payment of invoice value inclusive of VAT, that fact alone is not a sufficient basis for the Department to make an adjustment. We note that virtually every expense associated with less than fair value comparisons is paid for at some point after the cost is incurred. Accordingly, for each post-service payment, there is also an opportunity cost. Thus, to allow the type of adjustment suggested by respondent would imply that in the future the Department would be faced with the impossible task of trying to determine the opportunity cost of every freight charge, rebate, and selling expense for each sale reported in respondent's database. This exercise would make our calculations inordinately complicated, placing an unreasonable and onerous burden on both respondents and the Department. (See e.g., Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, from the United Kingdom, 58 FR 3253, January 8, 1993.) Consequently, we have recalculated home market credit expenses to exclude the VAT included in the gross unit prices used in the original calculation.

Comment 15

Petitioner argues that home market product liability costs are indirect rather than direct selling expenses because they are not directly related to sales made during the POI. Respondent disagrees, stating that these premiums are directly related to sales because the premium is assessed on sales value. According to respondent, each additional sale results in an additional product liability premium expense.

DOC Position

Because these premiums are assessed based on sales value, we have determined that these expenses are characteristic of direct expenses. We note that the U.S. product liability premium rates reported for U.S. sales of flux and cement were also based on sales value. Therefore, we have treated both home market and U.S. product liability expenses as direct selling expenses for purposes of the final determination, and have adjusted FMV and USP accordingly.

Comment 16

Petitioner claims that those sales made to a home market customer that were destined for export should not be included as home market sales in the Department's analysis. Petitioner states that the Department verified that Lafarge knew that certain sales of CA flux were to be exported to a third country at the time of sale to the home market customer. Accordingly, petitioner argues that these sales should not be included in the Department's FMV calculation.

DOC Position

We agree and have excluded these sales from our analysis.

Comment 17

Petitioner believes that for purposes of calculating profit related to the value added in the United States, U.S. brokerage and handling (including merchandise processing and harbor maintenance), U.S. unloading, U.S. loading and U.S. freight to processors costs, where applicable, should be attributed to the COM of CA clinker and flux in the United States because these expenses are incurred only after the product has arrived in the United States. Petitioner further believes that certain U.S. selling expenses (e.g., credit, warranty, indirect selling expenses, inventory carrying costs and product liability expenses) should also be included as part of U.S. further manufacturing costs.

Respondent does not believe that the Department should consider these charges and expenses to be part of U.S. further manufacturing costs, as petitioner requests. Lafarge contends that petitioner's argument is inconsistent with the antidumping statute and was put forth by petitioner solely to increase the profit allocated to further manufacturing and, as a result, the adjustment to USP.

DOC Position

We disagree with petitioner. Because U.S. brokerage and handling, and U.S. unloading and loading costs, are incurred on the imported merchandise prior to the commencement of further manufacturing in the United States, we find that they do not form part of the value added in the United States. Regarding the costs of freight to processors' warehouses associated with flux sales, we find that they do form part of the costs of further manufacturing the imported flux in the United States because these costs are incurred to transport the imported flux to and among the processors' warehouses for further manufacture. For U.S. cement sales, however, such transfer freight costs represent costs incurred to transport the already further manufactured clinker (i.e., the finished cement) to the warehouses from which the finished product is ultimately sold to U.S. customers. No freight to processors costs are incurred on U.S. cement sales because the further processing occurs at Lafarge's plant which is located at the U.S. port of importation. Regarding U.S. selling expenses, these expenses are incurred to sell both the imported and further manufactured products. Therefore, adding these expenses to U.S. further manufacturing costs, as petitioner suggests, would disproportionately increase the U.S. value added for purposes of calculating profit. (See e.g., Wire Rods from France.) Of the expenses at issue, we have only included costs of freight to processors associated with U.S. flux sales as part of U.S. value added in our final profit calculation.

Comment 18

Petitioner claims that the Department should recalculate respondent's U.S. indirect selling and G&A expenses for both cement and flux sales. Petitioner argues that, based on the Department's instructions, LCA's administration costs should have been reported as G&A (rather than indirect selling expenses), allocated based on cost of sales and included in the U.S. COM. According to petitioner, the Department should reduce the reported indirect selling expenses and the corresponding ESP cap.

Respondent maintains that LCA's calculation correctly assigned its administrative expenses to its operations. According to Lafarge, because LCA's administrative staff supports LCA's sales operations as well as factory operations, a portion of LCA's administrative expenses should be considered sales administration and treated as an indirect selling expense. Respondent notes, however, that it would not object if the Department

reduces the amount of administrative expenses assigned to the products under investigation under petitioner's proposal. Respondent contends that if the Department accepts petitioner's argument that U.S. indirect selling expenses and G&A should be recalculated, it should revise petitioner's calculations to use the correct, verified figures.

DOC Position

We agree with petitioner on the need to reclassify LCA's administrative expenses. Because these expenses are more appropriately characteristic of G&A expenses, we have reclassified them from indirect selling to G&A expenses based on verified data on the record.

Comment 19

Petitioner argues that no offset to financial expenses should be allowed for the short-term interest income claimed by Lafarge for purposes of calculating clinker CV and clinker and flux further manufacturing costs. Petitioner contends that the Department was unable to verify that the interest income reported was short-term in nature. Nor could the Department verify whether the reported interest income was related to the manufacture of the subject merchandise, according to petitioner.

Respondent asserts that the Lafarge corporate policy is not to invest in assets which produce other than short-term interest income. Accordingly, respondent maintains that all interest income earned by respondent's parent company Lafarge Coppee was short-term in nature, and an offset to interest expense should be allowed for the entire reported short-term interest income amount.

DOC Position

We agree with petitioner. The Department normally allows an offset to financial expenses for interest income earned on short-term investments of working capital related to the production of the subject merchandise. The Department does not offset interest expense with interest income earned on long-term investments related to activities unrelated to the manufacturing process. Because we were unable to verify the nature of the interest income reported, we have disallowed the financial expense offset claimed by Lafarge.

Comment 20

Petitioner notes that the Department discovered at verification that the depreciation of R&D assets was not included in the R&D expenses reported for purposes of calculating clinker CV. Petitioner states that the Department should include this depreciation in the reported R&D expenses.

DOC Position

We agree and have adjusted the R&D expenses reported for purposes of calculating clinker CV to reflect the inclusion of depreciation for R&D assets. We note that this adjustment also affected the total reported COM of the imported clinker and flux used in the calculation of U.S. value added profit.

Comment 21

Petitioner asserts that exchange rate gains and losses should be added to raw material costs for purposes of calculating clinker CV. According to petitioner, during verification the Department discovered that Lafarge had not reported the foreign exchange gains and losses related to the importation of raw materials used to produce the subject merchandise.

DOC Position

We agree, based on our findings at verification, that Lafarge did not report these foreign exchange gains and losses. Accordingly, we have added these gains and losses to the reported raw material costs for purposes of calculating clinker CV for the final determination. We note that this adjustment also affected the total reported COM of the imported clinker and flux used in the calculation of U.S. value added profit.

Comment 22

Petitioner argues that, because LFI repeatedly refused to separately report its labor costs and classify them according to Department practice as variable costs for purposes of calculating clinker CV and total flux and clinker COM used in the calculation of U.S. value added profit, the Department must resort to BIA to determine these costs. As BIA, petitioner asserts that the Department should not annualize any fixed costs but rather use only the fixed costs reported for the POI. Petitioner argues that this is a reasonable BIA methodology given the Department's inability to break out the labor costs from fixed costs and properly treat the labor costs as variable costs.

Respondent contends that LFI's labor costs have the characteristics of fixed costs since the number of workers working at LFI's plants is generally constant and the total pool of labor costs tends not to vary with production levels. LFI also asserts that labor costs are distorted by fluctuations in monthly production volumes as a result of plant shut-downs for maintenance. According to respondent, the use of fixed costs for the POI would distort the Department's CV and further manufacturing cost calculations. LFI states that, under the logic of the preliminary determination, fixed labor costs should be based on the reported annual period.

DOC Position

We agree with petitioner. Lafarge normally records labor costs for clinker and flux as a fixed cost. Respondent followed its normal accounting system for the response and reported labor as a fixed cost for the year 1992. This methodology differs from the Department's normal practice where labor is considered a variable cost and as such would be reported on a weighted-average basis for the POI.

In the preliminary determination the Department accepted the annualization of fixed costs because LFI claimed that periodic shut-down expenses incurred for maintaining its furnaces created significant aberrations in monthly production costs. In order to eliminate the effect of these distortions, we allowed LFI to report fixed costs on an annual weighted-average basis.

However, it was not until verification that the Department first discovered that labor costs were included in the reported annualized fixed costs. The Department's Section D and E questionnaires for clinker and flux identified direct and indirect labor as costs that should be reported as variable costs for response purposes. The questionnaires also specifically requested that LFI itemize the expenses included in fixed and variable costs. LFI did not itemize its variable or fixed costs or otherwise identify how it treated its labor costs in response to the Department's requests. Because LFI was not responsive to the Department's requests for information and incorrectly classified labor costs as fixed costs, and since there was no information on the record to permit the accurate reclassification of labor costs, we have disallowed the annualization of fixed costs and have used only the reported fixed costs for the POI as BIA for purposes of the final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of CA cement and cement clinker from France and to begin the suspension of liquidation of all entries of CA flux from France that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in

the Federal Register. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated margin amount by which the FMV of the subject merchandise exceeds the USP, as shown below. The less than fair value margins for CA cement and cement clinker are as follows:

Producer/manufacturer/exporter	Weighted-average margin percentage
Lafarge	18.91
All Others	18.91

The less than fair value margins for CA flux are as follows:

Producer/manufacturer/exporter	Weighted-average margin percentage
Lafarge	31.08
All Others	31.08

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determinations. As our final determinations are affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry within 45 days.

If the ITC determines that material injury or threat of material injury does not exist, the proceedings will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on CA cement, cement clinker and flux from France entered or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) in these investigations of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

These determinations are published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(a)(4).

Dated: March 18, 1994.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94-7122 Filed 3-24-94; 8:45 am]

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[A-427-813, A-533-811, A-508-807, A-557-808, A-580-824, A-549-809, A-412-816, A-307-812]

Initiation of Antidumping Duty Investigations: Certain Carbon Steel Butt-Weld Pipe Fittings From France, et al.

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: March 25, 1994.

FOR FURTHER INFORMATION CONTACT: Steve Alley or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-5288 and 482-1769, respectively.

INITIATION OF INVESTIGATIONS:

The Petition

On February 28, 1994, we received petitions filed on behalf of the domestic industry in proper form from the U.S. Fittings Group, an *ad hoc* trade association, a majority of whose members produce the subject merchandise. Petitioner filed supplements to the petition on March 14 and 15, 1994. In accordance with 19 CFR 353.12, petitioner alleges that certain carbon steel butt-weld pipe fittings (pipe fittings) from France, India, Israel, Malaysia, South Korea, Thailand (manufacturer: Awaji Sangyo (Thailand) Co., Ltd. (AST)), the United Kingdom, and Venezuela are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry. (Note: On July 6, 1992, the Commerce Department published in the Federal Register (57 FR 29702) an antidumping duty order on pipe fittings from Thailand. However, AST was excluded from the antidumping order because its exports were found to have a *de minimis* dumping margin. However, based on petitioner's recent allegation, we have determined that it is appropriate to initiate a new investigation of AST.)

Petitioner stated that it has standing to file the petition because it represents interested parties as defined under section 771(9)(E) of the Act, and because the petition was filed on behalf of the U.S. industry producing the product subject to these investigations. If any interested party, as described under paragraphs (C), (D), (E) or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, such party should file a written notification with the Assistant Secretary for Import Administration.

Scope of Investigations

The products covered by these investigations are certain carbon steel butt-weld pipe fittings having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are forged steel products used to join pipe sections in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other methods of fastening (e.g., threaded, grooved, or bolted fittings). Pipe fittings come in several basic shapes: "elbows", "tees", "caps", and "reducers". The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the "bead" of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written descriptions of the scope of these proceedings are dispositive.

United States Price and Foreign Market Value

For all countries except Venezuela, petitioner based United States Price (USP) on price quotes obtained through the business activity of one of its members. Such price quotes show delivered prices of butt-weld pipe fittings to unrelated U.S. customers. Petitioner calculated USP by subtracting movement charges and U.S. customs duties.

For Venezuela, petitioner based U.S. price on average unit values derived from U.S. Customs import statistics.

Petitioner was unable to obtain home market or third country prices for any of the eight countries. Therefore, in accordance with 19 CFR 353.12(b)(7), constructed value (CV) was used to calculate foreign market value (FMV). Petitioner based the CV on the costs of one of its members, adjusted for known differences in each country. Petitioner

then added selling, general and administrative expenses, and profit to compute the CV.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that the merchandise is being, or is likely to be, sold at less than fair value. The margins alleged by petitioners are listed below. If it becomes necessary at a later date to consider the petitions as a source of best information available (BIA) in any of the investigations, we may review more thoroughly all of the bases for USP and FMV in determining BIA.

Country	Alleged margins (percent)
France	72.86 to 117.24
India	143.35 to 188.09
Israel	63.19 to 87.05
Malaysia	140.41 to 194.70
South Korea	72.36 to 207.89
Thailand	77.67 to 175.30
United Kingdom	50.29 to 92.31
Venezuela	188.58 to 595.66

Initiation of Investigations

We have examined the petition on pipe fittings from France, India, Israel, Malaysia, South Korea, Thailand (manufacturer: AST), the United Kingdom, and Venezuela and have found that it meets the requirements of section 732(b) of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of pipe fittings from France, India, Israel, Malaysia, South Korea, Thailand (manufacturer: AST), the United Kingdom, and Venezuela are being, or are likely to be, sold in the United States at less than fair value.

ITC Notification

Section 732(d) of the Act requires us to notify the International Trade Commission (ITC) of this action and we have done so.

Preliminary Determination by the ITC

The ITC will determine by April 14, 1994, pursuant to section 733(a)(1) of the Act, whether there is a reasonable indication that imports of pipe fittings from France, India, Israel, Malaysia, South Korea, Thailand (manufacturer: AST), the United Kingdom, and Venezuela are materially injuring, or threaten material injury to, a U.S. industry. Pursuant to section 733(a)(2) of the Act, a negative ITC determination will result in the respective investigation being terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: March 21, 1994.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94-7123 Filed 3-24-94; 8:45 am]

BILLING CODE 3510-DS-P

[C-533-812, C-508-808]

Initiation of Countervailing Duty Investigations: Certain Carbon Steel Butt-Weld Pipe Fittings From India and Israel

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: March 25, 1994.

FOR FURTHER INFORMATION CONTACT: Julie Anne Osgood (India) or Elizabeth Graham (Israel), Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 482-0167 and 482-4105.

The Petition

On February 28, 1994, we received petitions in proper form filed by the U.S. Fittings Group on behalf of the United States carbon steel butt-weld pipe fittings ("pipe fittings") industry. In accordance with 19 CFR 355.12, petitioner alleges that manufacturers, producers, or exporters of the subject merchandise in India and Israel receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended ("the Act").

Injury Test

India and Israel are each a "country under the Agreement" within the meaning of section 701(b) of the Act. Therefore, Title VII of the Act applies to these investigations. Accordingly, the U.S. International Trade Commission ("ITC") must determine whether imports of the subject merchandise from India and Israel materially injure, or threaten material injury to, a U.S. industry.

Standing

Petitioner has stated that it is an interested party, as defined in section 771(9)(E) of the Act, and that it has filed the petitions on behalf of the U.S. industry producing the merchandise subject to these investigations. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, such party should file a written notification with the Assistant Secretary for Import Administration, in accordance with 19 CFR 355.31.

Scope of Investigation

The products covered by these investigations are certain carbon steel butt-weld pipe fittings having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are forged steel products used to join pipe sections in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other methods of fastening (*e.g.*, threaded, grooved, or bolted fittings). Pipe fittings come in several basic shapes: "elbows", "tees", "caps", and "reducers." The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the "bead" of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

Initiation of Investigations

The Department has examined the petitions on pipe fittings from India and Israel and found that they comply with the requirements of section 702(b) of the Act and 19 CFR 355.12. Therefore, in accordance with section 702(c) of the Act and 19 CFR 355.13 (a) and (b), we are initiating countervailing duty investigations to determine whether manufacturers, producers or exporters of pipe fittings in India and Israel receive countervailable subsidies. The following programs are included in our investigations.

India

1. Rebates Under the International Price Reimbursement Scheme
2. Pre-Shipment Export Loans
3. Post-Shipment Export Loans
4. Advances Licenses
5. Use and Sale of Additional Licenses
6. Sale of Replenishment Licenses
7. Income Tax Deductions Under Section 80HHC
8. Market Development Assistant Grants
9. Export-Promotion, Capital Goods Scheme
10. Benefits for 100 Percent Export-Oriented Units
11. Benefits Provided by Export-Processing Zones

We are not including the following programs which are alleged to be benefitting producers of the subject merchandise in India. (For a more detailed discussion, see the Memorandum to Barbara R. Stafford from Team dated March 21, 1994, on file in the Central Records Unit of the Main Commerce Building.)

1. Regional Incentives

Petitioner alleges that new projects and industries in "backward" states may be eligible for subsidies from the Government of India ("GOI") or the state government. According to petitioner, the subsidies include federal and state tax benefits and fixed-capital investment subsidies. However, petitioner has not provided any information that the producers of pipe fittings are located in these "backward" states.

Rebates Under the Cash Compensatory Support Program

The Cash Compensatory Support Program ("CCS") was established in 1966 by the GOI to rebate indirect taxes on exported merchandise. Petitioner argues that although the GOI suspended the program effective July 3, 1991, producers/exporters of pipe fittings may be receiving residual benefits.

We verified in the 1990 Administrative Review of the Countervailing Duty Order on Certain Iron-Metal Castings from India that the GOI terminated cash rebates on exports made after July 2, 1991 (*see* the December 13, 1993 government verification report on file in Room B-099 of the Main Commerce Building).

Because we consider the countervailable benefit from this program to occur at the time the benefit is earned, *i.e.*, at the time of export, and not when a company applies for or receives the benefit (see section 355.48(b)(7) of the Department's proposed regulations in Countervailing Duties; notice of proposed rulemaking and Request for Public Comments, 54 FR 23366 (May 31, 1989); and Final Affirmative Countervailing Duty Determination: Steel Wire Rope from India, 56 FR 46292, 46294 (September 11, 1991)), the producers of pipe fittings could not have benefitted from this program during the period of investigation.

3. Reduced Freight Rates

Petitioner alleges that the cost of delivery for steel is reduced for customers located in remote areas of India. However, petitioner has not provided sufficient information concerning the nature of this program or information indicating that the producers of pipe fittings are located in "remote areas."

Israel

1. Grants under the Encouragement of Capital Investments Law of 1959 ("ECIL")
2. Other Benefits Under ECIL
   a. Section 42—Preferential Accelerated Depreciation
   b. Section 46—Tax Benefits
   c. Section 24—Preferential Loans
   d. Interest Subsidy Payments
3. Long-Term Industrial Development Loans
4. Exchange Rate Risk Insurance Scheme
5. Labor Training Grants
6. Industrial Research and Development Grants
7. Special Export Financing Loans
8. Export Incentives
   a. Exception from wharfage fee and indirect taxes
   b. Provision of funds for transportation of goods to Eilat Harbor

We are not including the following programs which are alleged to be benefitting producers of the subject merchandise in Israel. (For a more detailed discussion, see the Memorandum to Barbara R. Stafford from Team dated March 14, 1994, on file in the Central Records Unit of the Main Commerce Building.)

1. Partial Tax Exemption Under ECIL

Petitioner alleged that manufacturers of pipe fittings may have received partial tax exemptions under ECIL. However, this program was determined in a previous case to be terminated. See Final Affirmative Countervailing Duty Determination of Oil Country Tubular Goods from Israel, 52 FR 1649 (January 15, 1987). Petitioner provided no new information to indicate that residual benefits are being received or that the program has been re-enacted.

2. Equity Maintenance Allowances

Petitioner alleged that manufacturers of pipe fittings may have received benefits under this program. However, petitioner does not describe the nature of the benefits provided under this program, nor indicate why it believes that manufacturers of pipe fittings may have benefitted from the program.

ITC Notification

Pursuant to Section 702(d) of the Act, we have notified the ITC of these initiations.

Preliminary Determinations by the ITC

The ITC will determine by April 14, 1994, whether there is a reasonable indication that a United States industry is being materially injured, or threatened with material injury, by reason of imports from India and Israel. Any ITC determination which is negative will result in the respective investigation being terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to 702(c)(2) of the Act and 19 CFR 355.13(b).

Dated: March 21, 1994.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94-7124 Filed 3-24-94; 8:45 am]

BILLING CODE 3510-DS-P

National Telecommunications and Information Administration (NTIA)

RIN 0660-AA05

Public Meeting Concerning the Preliminary Spectrum Reallocation Report

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice of a Meeting to Answer Questions From the Public Concerning the Preliminary Spectrum Reallocation Report Which Identifies 200 Megahertz for Public Use.

SUMMARY: In accordance with the provisions of the Omnibus Budget Reconciliation Act of 1993, Title VI, Communications Licensing and Spectrum Allocation Improvement, NTIA will hold a meeting to answer questions from the public concerning the Preliminary Spectrum Reallocation Report on April 7, 1994, from 1:30 pm to 3:30 pm. The meeting will be held in room 4830 at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Interested parties are invited to submit written comments (10 copies) as soon as possible. The report is available now at NTIA in hard copy form and on NTIA's Bulletin Board at (202) 482-1199. Comments can be provided in written form, via the NTIA bulletin board, or via Internet E-mail to "NSCHROEDER@NTIA.DOC.GOV".

FOR FURTHER INFORMATION CONTACT: The person to contact to obtain copies of the report and provide written comments is: Norbert Schroeder, Program Manager, Spectrum Openness, National Telecommunications and Information Administration, room 4092, U.S. Department of Commerce, 14th Street

and Constitution Avenue NW., Washington, DC 20230, Telephone: (202) 482–3999, Fax: (202) 482–4396.

Dated: March 15, 1994.

Norbert Schroeder,

Program Manager, Spectrum Openness, NTIA.

[FR Doc. 94–7161 Filed 3–24–94; 8:45 am]

BILLING CODE 3510–60–M

National Oceanic and Atmospheric Administration

[I.D. 031894C]

Caribbean Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Scientific and Statistical Committee (SSC) and the Advisory Panel (AP) of the Caribbean Fishery Management Council (Council) established by section 302 of the Magnuson Fishery Conservation and Management Act (Public Law 94–265, as amended), will hold separate meetings.

The SSC will meet on April 20, 1994, at the Travelodge Hotel, San Juan, Puerto Rico. The AP will meet on April 21, at the same location. Both meetings will begin at 10 a.m. and will adjourn at 5 p.m.

The meetings are open to the public, and will be conducted in the English language. However, simultaneous translation (English/Spanish) will be available at the AP meeting.

Fishermen and other interested persons are invited to attend. Members of the public will be allowed to submit oral or written statements regarding agenda issues.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577; telephone: (809) 766–5926.

SUPPLEMENTARY INFORMATION: These meetings are physically accessible to people with disabilities. For more information or requests for sign language interpretation and/or other auxiliary aids please contact Mr. Miguel A. Rolón at the above address and telephone number, at least 5 days prior to the meeting date.

Dated: March 21, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–7137 Filed 3–24–94; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 031894D]

Caribbean Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council (Council) established by section 302 of the Magnuson Fishery Conservation and Management Act (Public Law 94–265, as amended) and its Administrative Committee will hold separate meetings.

The Council will hold its 81st regular public meeting on April 26–28, 1994, to discuss the fourth draft of the "Coral FMP," among other topics.

The Council will convene on April 26 and 27, from 9 a.m. until 5 p.m., and on April 28, from 9 a.m until approximately noon.

The Administrative Committee will meet on April 25, from 2 p.m until 5 p.m, to discuss administrative matters regarding Council operation.

Both meetings will take place at the Town Hall Conference Room, Bluebeard's Castle Hotel, in St. Thomas, U.S.V.I.

The meetings are open to the public, and will be conducted in English. Fishermen and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577; telephone: (809) 766–5926.

SUPPLEMENTARY INFORMATION: These meetings are physically accessible to people with disabilities. For more information or requests for sign language interpretation and/or other auxiliary aids please contact Mr. Miguel A. Rolón at above address and telephone number, at least 5 days prior to the meeting date.

Dated: March 21, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–7138 Filed 3–24–94; 8:45 am]

BILLING CODE 3510–22–P

National Telecommunications and Information Administration (NTIA)

RIN 0660–AA05

Public Meeting Concerning the Preliminary Spectrum Reallocation Report

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice of a meeting to answer questions from the public concerning the preliminary spectrum reallocation report which identifies 200 Megahertz for public use.

SUMMARY: In accordance with the provisions of the Omnibus Budget Reconciliation Act of 1993, Title VI, Communications Licensing and Spectrum Allocation Improvement, NTIA will hold a meeting to answer questions from the public concerning the Preliminary Spectrum Reallocation Report on April 7, 1994, from 1:30 pm to 3:30 pm. The meeting will be held in room 4830 at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Interested parties are invited to submit written comments (10 copies) as soon as possible. The report is available now at NTIA in hard copy form and on NTIA's Bulletin Board at (202) 482–1199. Comments can be provided in written form, via the NTIA bulletin board, or via Internet E-mail to "NSCHROEDER@NTIA.DOC.GOV".

FOR FURTHER INFORMATION CONTACT: The person to contact to obtain copies of the report and provide written comments is: Norbert Schroeder, Program Manager, Spectrum Openness, National Telecommunications and Information Administration, room 4092, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, Telephone: (202) 482–3999, Fax: (202) 482–4396.

Dated: March 15, 1994.

Norbert Schroeder,

Program Manager, Spectrum Openness NTIA.

[FR Doc. 94–7161 Filed 3–24–94; 8:45 am]

BILLING CODE 3510–60–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits and Amendment of Visa Requirements for Certain Cotton, Wool and Man-Made Fiber Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Democratic Socialist Republic of Sri Lanka

March 22, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending and establishing limits and amending visa requirements.

EFFECTIVE DATE: March 28, 1994.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6708. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated February 11, 1994, the Governments of the United States and the Democratic Socialist Republic of Sri Lanka agreed to amend and extend their bilateral textile agreement through June 30, 1995.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the current restraint period to begin on January 1, 1994 and extend through June 30, 1995 and establish a six-month period for July 1, 1993 through December 31, 1993. The limits for Categories 334/634, 335/835, 340/640, 340–Y/640–Y, 341/641, 347/348/847, 347–T/348–T/847–T, 351/651 and 635 for the period July 1, 1993 through December 31, 1993 will be filled upon opening. Goods shipped in excess of these limits are being charged to the corresponding limits for the January 1, 1994 through June 30, 1995 period. Also, the visa arrangement is being amended to no longer require a 347–T/348–T/847–T visa for goods produced or manufactured in Sri Lanka and exported from Sri Lanka.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 58 FR 62645, published on November 29, 1993). Also see 53 FR 34573, published on September 7, 1988; and 58 FR 34570, published on June 22, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 22, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 22, 1993 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products and silk blend and other vegetable fiber apparel produced or manufactured in the Democratic Socialist Republic of Sri Lanka for the twelve-month period which began on July 1, 1993 and extends through June 30, 1994.

Effective on March 28, 1994, you are directed, pursuant to the Memorandum of Understanding (MOU) dated February 11, 1994 between the Governments of the United States and the Democratic Socialist Republic of Sri Lanka, to amend the current restraint period to begin on January 1, 1994 and extend through June 30, 1995 at the levels listed below. The sublimit for Categories 347–T/348–T/847–T and the limit for Category 361 shall be eliminated.

Category	Eighteen-month limit [1]
237	354,897 dozen.
314	5,616,000 square meters.
331/631	3,510,697 dozen pairs.
333/633	66,805 dozen.
334/634	782,863 dozen.
335/835	344,460 dozen.
336/636/836	515,646 dozen.
338/339	1,565,724 dozen.
340/640	1,516,489 dozen of which not more than 606,596 dozen shall be in Categories 340–Y/640–Y [2].
341/641	2,441,250 dozen of which not more than 1,627,500 dozen shall be in Category 341 and not more than 1,627,500 dozen shall be in Category 641.
342/642/842	814,176 dozen.
345/845	210,853 dozen.
347/348/847	1,684,077 dozen.
350/650	146,134 dozen.
351/651	390,040 dozen.
352/652	1,670,107 dozen.
359–C/659–C [3]	1,608,003 kilograms.
360	1,836,000 numbers.
363	15,135,331 numbers.
369–D [4]	1,136,322 kilograms.
369–S [5]	946,932 kilograms.
435	22,575 dozen.
611	7,191,000 square meters.
635	459,280 dozen.
638/639/838	1,115,702 dozen.
644	626,290 numbers.
645/646	250,516 dozen.
647/648	1,343,175 dozen.
840	396,500 dozen.

[1] The limits have not been adjusted to account for any imports exported after June 30, 1993.

[2] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[3] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[4] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[5] Category 369–S: only HTS number 6307.10.2005.

Textile products in Categories 360, 435, 611 and 840 which have been exported to the United States prior to January 1, 1994 shall not be subject to this directive.

Textile products in Categories 360, 435, 611 and 840 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on December 9, 1993; pursuant to the Memorandum of Understanding (MOU) dated February 11, 1994 between the Governments of the United States and the

Democratic Socialist Republic of Sri Lanka; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 28, 1994, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in Sri Lanka and exported during the six-month period beginning on July 1, 1993 and extending through December 31, 1993, in excess of the following levels of restraint:

Category	Six-month restraint limit [1]
237	138,774 dozen.
314	1,800,000 square meters.
331/631	1,173,890 dozen pairs.
333/633	6,125 dozen.
334/634	286,226 dozen.
335/835	105,633 dozen.
336/636/836	209,895 dozen.
338/339	587,147 dozen.
340/640	348,467 dozen of which not more than 188,597 dozen shall be in Categories 340–Y/640–Y [2].
341/641	842,625 dozen of which not more than 561,750 dozen shall be in Category 341 and not more than 561,750 dozen shall be in Category 641.
342/642/842	331,412 dozen.
345/845	67,581 dozen.
347/348/847	642,054 dozen of which not more than 385,234 dozen shall be in Categories 347–T/348–T/847–T [3].
350/650	60,421 dozen.
351/651	133,764 dozen.
352/652	653,055 dozen.
359–C/659–C [4]	413,565 kilograms.
363	3,657,330 numbers.
369–D [5]	364,206 kilograms.
369–S [6]	370,275 kilograms.
635	112,945 dozen.
638/639/838	413,106 dozen.
644	200,734 numbers.
645/646	67,935 dozen.
647/648	370,377 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

[2] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[3] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.4020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.3010, 6112.11.0050, 6113.00.0038, 6203.19.1020, 6203.19.4020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.3020, 6210.40.2033, 6211.20.1520, 6211.20.3010 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.2030, 6104.22.0040, 6104.29.2034, 6104.62.2010, 6104.62.2025, 6104.69.3022, 6112.11.0060, 6113.00.0042, 6117.90.0042, 6204.12.0030, 6204.19.3030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.3010, 6204.69.9010, 6210.50.2033, 6211.20.1550, 6211.20.6010, 6211.42.0030 and 6217.90.0050; Category 847–T: only HTS numbers 6103.29.2044, 6103.49.3017, 6103.49.3024, 6104.29.2041, 6104.29.2045, 6104.69.3034, 6104.69.3038, 6112.19.2080, 6112.19.2090, 6117.90.0051, 6203.29.3046, 6203.49.3040, 6203.49.3045, 6204.29.4041, 6204.29.4047, 6204.69.3052, 6204.69.9044, 6211.20.3040, 6211.20.6040, 6211.39.0040, 6211.49.0040 and 6217.90.0070.

[4] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[5] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[6] Category 369–S: only HTS number 6307.10.2005.

Goods exported in excess of the limits established for the July 1, 1993 through December 31, 1993 period shall be charged to the period January 1, 1994 through June 30, 1995.

You are directed to deduct the following amounts from the charges made to the following categories for the period beginning on January 1, 1994 and extending through June 30, 1995. These same amounts shall be charged to the corresponding categories for the period beginning on July 1, 1993 and extending through December 31, 1993.

Category	Amount to be deducted/charged
237	34,620 dozen.
314	652,349 square meters.
331/631	1,158,875 dozen pairs.
334/634	286,226 dozen.
335/835	105,633 dozen.
336/636/836	105,533 dozen.
338/339	511,197 dozen.
340/640	159,870 dozen.
340–Y/640–Y	188,597 dozen.
341	561,750 dozen.
342/642/842	126,252 dozen.
345/845	40,468 dozen.
347/348/847	256,820 dozen.
350/650	55,470 dozen.
351/651	133,764 dozen.
352/652	488,885 dozen.
359–C/659–C	49,601 kilograms.
363	1,702,572 numbers.
369–D	54,912 kilograms.
369–S	237,813 kilograms.
635	112,945 dozen.
638/639/838	200,649 dozen.
641	280,875 dozen.
645/646	19,178 dozen.
644	40,146 numbers.
647/648	326,310 dozen.

Also, you are directed to deduct 385,234 dozen from the charges made to Categories 347/348/847 for the period January 1, 1994 through June 30, 1995. This same amount shall be charged to Categories 347–T/348–T/847–T for the July 1, 1993 through December 31, 1993 period.

You are directed to amend further the directive dated September 1, 1988 to no longer require a part-category visa for 347–T/348–T/847–T for goods produced or manufactured in Sri Lanka and exported from Sri Lanka on and after March 28, 1994. Goods exported during the period March 28, 1994 through April 27, 1994 shall not be denied entry if visaed as 347–T/348–T/847–T.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–7185 Filed 3–24–94; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: April 25, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On April 16, May 7, September 17, 1993 and January 28, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (58 FR 19805, 27272, 48637 and 59 FR 4043) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Janitorial/Custodial, U.S. Courthouse, 3rd and Constitution Avenue, NW, Washington, DC.

Janitorial/Custodial, Bldgs. 243, 255, 277, 322, 323, 325, 336, 382, 400–402, 405, 410, 412–419, 422–424, 430, 485, 497, 591–593, 887, 891, 902, 909, 911, 912, 914, R10 and R20, Kirtland Air Force Base, New Mexico.

Janitorial/Custodial, U.S. Post Office and Courthouse, 200 S. Washington Street, Alexandria, Virginia.

Janitorial/Custodial, Poff Federal Building and Courthouse, 210 Franklin Road SW, Roanoke, Virginia.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–7105 Filed 3–24–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 25, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2–3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and service to the Government.

2. The action will result in authorizing small entities to furnish the commodity and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statements underlying the certification on which they are providing additional information.

The following commodity and service have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Sleeve, Protective, 9330–LL–NO1–0397, (Requirements for the Fleet and Industrial Supply Center, Puget Sound, Bremerton, Washington)

NPA: Portland Habilitation Center, Inc. Portland, Oregon

Janitorial/Custodial, Charles E. Chamberlain Federal Building, 315 W. Allegan, Lansing, Michigan

NPA: Peckham Vocational Industries, Inc. Lansing, Michigan

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–7106 Filed 3–24–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletion from procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a commodity previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 25, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2–3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information. The following commodities have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Cord Assembly, Elastic, 4020–01–072–4558,
NPA: Alpha Opportunities, Inc.,
Jamestown, North Dakota

Enamel, Aerosol, Waterbase
8010–01–350–5254
8010–01–350–5255
8010–01–350–4746
8010–01–350–4747
8010–01–350–5259
8010–01–350–5256
8010–01–350–6258
8010–01–350–4757
8010–01–350–4749
8010–01–350–5261
8010–01–350–5253
NPA: Lighthouse for the Blind St. Louis, Missouri at its facility in Berkeley, Missouri

Deletion

The following commodity has been proposed for deletion from the Procurement List: Marker, Traffic Control Device, 9905–01–009–7826.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–7107 Filed 3–24–94; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF ENERGY

Chicago Field Office, Dallas Support Office

Grant and Cooperative Agreement Awards: Oklahoma State University

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, through the Dallas Support Office, announces that it intends to award a grant to Oklahoma State University (OSU)/International Ground Source Heat Pump Association (IGSHPA). The proposed award meets the criteria in 10 CFR 600.7(b)(2)(i)(B) in addition to the type of factors listed in 10 CFR 600.14(d). The financial assistance is for support of the Geothermal Heating and Cooling Teleconference '94 and '95.

SUPPLEMENTARY INFORMATION: The Geothermal Heating and Cooling Teleconference '94 and '95 are the most significant national teleconferences concentrating on the use of ground source heat pumps as an energy efficient method of heating and cooling buildings. The primary target audiences for these teleconferences are school buildings, residences and government buildings. These buildings have unique needs for heating, cooling and water heating. Advances in ground source heat pump efficiency and installation techniques, as well as reductions in installation costs, make the cost of this technology comparable with those of competitive heating and cooling technologies, while operating costs and energy usage are demonstrably lower. This is especially important for institutional and government facilities faced with budget constraints and increasing utility expenditures. These teleconferences, which will include successful case studies and interviews with designers, technical experts and representatives of the various targeted audiences, will provide information on a economical, energy efficient and environmentally beneficial method for heating and cooling facilities. DOE's mission of increasing energy efficiency in the institutional, residential and governmental sectors will be advanced through participation in the teleconference. The DOE anticipates providing funds in the amount of $30,000 for each of the two teleconferences over a project period of 24 months.

FOR FURTHER INFORMATION CONTACT: Linda K. Carter, U.S. Department of Energy, Dallas Support Office, 1420 West Mockingbird Lane, suite 400, Dallas, TX 75247.

Issued in Chicago, Illinois on March 10, 1994.

Alan E. Smith,

Director, Information Management & Support Division.

[FR Doc. 94–7108 Filed 3–24–94; 8:45 am]

BILLING CODE 6450–01–M

Environment, Safety and Health Advisory Committee; Open Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

DATE AND TIME: April 13, 1994, 9 a.m.–4 p.m. April 14, 1994, 9 a.m.–3:30 p.m.

PLACE: The Key Bridge Marriott Hotel, 1401 Lee Highway, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Geoffrey Judge, Designated Federal Official, or Loretta Young, U.S. Department of Energy, Office of Environment, Safety and Health, EH–1, room 7A–097, Washington, DC 20585, Telephone: 202/586–6151.

SUPPLEMENTARY INFORMATION: *Purpose of the Committee:* To provide advice and guidance to the Department of Energy (DOE) on matters relating to environment, safety and health at DOE facilities.

Tentative Agenda

Wednesday, April 13, 1994

9–9:05 Call to Order, Geoffrey Judge, Designated Federal Official.

9:05–9:30 Opening Remarks and General Business, Ellen Mangione, Acting Chair.

9:30–10 Update on the Office of Environment, Safety and Health, Tara O'Toole, Assistant Secretary for Environment, Safety and Health, DOE.

10–10:15 Break.

10:15–11:15 Health and Human Services Advisory Committee, John Bagby.

11:15–11:45 Environment, Safety and Health Strategic Planning, Tara O'Toole, DOE.

11:45–1 Lunch.

1–2 Environment, Safety and Health Vulnerability Studies, Mark Williams and Sarbes Acharya, DOE.

2–2:45 Accountability for Management of Environment, Safety and Health Programs, Frank Tooper, DOE.

2:45–3 Break.

3–4 Public Input and Public Comment—10 minute rule.

4 Meeting Adjourned.

Thursday, April 14, 1994

9–9:15 Opening Remarks, Ellen Mangione, Acting Chair.

9:15–10 International Health Studies, Harry Pettengill, DOE.

10–11 Medical Surveillance Program, Heather Stockwell, DOE.

11–11:15 Break.

11:15–12:30 Report on Radiation Control Subcommittee, John Poston, Texas A&M University.

12:30–1:30 Lunch.

1:30–2:30 Radiation Protection, Rick Jones, DOE.

2:30–2:45 Future Meeting.
2:45–3 Closing Remarks and Adjournment.

Public Participation: The meeting is open to the public. The Acting Chairperson is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Loretta Young at the address or telephone number listed above. Requests must be received at least five business days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Persons wishing to attend the public meeting should provide their names to Loretta Young at (202) 586–6151 by April 6, 1994.

Transcript: Available for public review and copying at the Public Reading Room, room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on March 22, 1994.

Marcia L. Morris,

Deputy Advisory Committee, Management Officer.

[FR Doc. 94–7111 Filed 3–24–94; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection; (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before April 25, 1994. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The first energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–542.
3. 1902–0070.
4. Gas Pipeline Rates: Rate Tracking (Non-Formal).
5. Extension.
6. On occasion.
7. Mandatory.
8. Businesses or other for-profit.
9. 50 respondents.
10. 4 responses.
11. 175 hours per response.
12. 35,000 hours.
13. FERC–542 is required by the Commission to determine if an interstate pipeline's rates comply with the requirement that the rates/charges are just and reasonable, and nondiscriminatory or unduly preferential.

The second energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–543.
3. 1902–0152.
4. Gas Pipeline Rates: Rate Tracking (Formal).
5. Extension.
6. On occasion.
7. Mandatory.
8. Businesses or other for-profit.
9. 4 respondents.
10. 1 response.
11. 1,030 hours per response.
12. 4,120 hours.
13. FERC–543 is required by the Commission to determine if an interstate pipeline's rates comply with the requirement that the rates/charges are just and reasonable, and nondiscriminatory or unduly preferential. This is a follow-on to FERC–542.

Statutory Authority: Section 2(a) of the Paperwork Reduction Act of 1980, (Pub. L. No. 96–511), which amended Chapter 35 of Title 44 United States Code (See 44 U.S.C. 3506 (a) and (c)(1)).

Issued in Washington, DC, March 17, 1994.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 94–7109 Filed 3–24–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. EG94–36–000, et al.]

2285241 Nova Scotia Ltd., et al; Electric Rate and Corporate Regulation Filings

March 16, 1994.

Take notice that the following filings have been made with the Commission:

1. 2285241 Nova Scotia Limited

[Docket No. EG94–36–000]

On March 10, 1994, 2285241 Nova Scotia Limited ("GP Sub") (c/o Mary Ann Ralls, Reid & Priest, 701 Pennsylvania Avenue, NW., Washington, DC 20004) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

GP Sub states in its application that it is a Nova Scotia corporation formed to acquire a general partnership interest in Brooklyn Energy Limited Partnership, a Nova Scotia limited partnership formed to own an electric and steam generating facility to be located in Brooklyn, the Province of Nova Scotia, Canada.

Comment date: April 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. LG&E-Westmoreland Southampton

[Docket Nos. QF88–84–005 and EL94–45–000]

On February 23, 1994, LG&E-Westmoreland Southampton (Applicant), filed a request with the Federal Energy Regulatory Commission for a temporary waiver of the operating standard, and an application for recertification, of a facility as a qualifying cogeneration facility pursuant to §§ 292.205(c) and 202.207, respectively, of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to applicant, the 62.64 MW topping-cycle cogeneration facility, which is located in Southampton County, Virginia, consists of two stoker-fired boilers and an extraction/condensing steam turbine generator. The primary energy source is coal. The facility was placed in service on March 7, 1992.

Applicant states that the temporary waiver is requested due to: (1) Start-up problems in calendar year 1992, (2) the difficulty of producing extraction steam at a sufficient pressure during low electric loads, and (3) operating company personnel error.

Comment date: Thirty days after publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

3. Temple-Inland Forest Products Corporation

[Docket No. QF94–76–000]

On March 9, 1994, Temple-Inland Forest Products Corporation (Temple-Inland) of 303 S. Temple Drive, Diboll, Texas 75941, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility is located at the Temple-Inland Bleached Pulp and Paperboard operation in Evadale, Texas, and will consist of three recovery boilers, two biomass gas-fired boilers, a natural-gas-fired boiler and two steam turbine generators. The net electric power production capacity is 30.6 MW. Thermal energy recovered from the facility used for process purposes in the papermill.

Comment date: Thirty days after publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–7046 Filed 3–24–94; 8:45 am]

BILLING CODE 6717–01–P

[Project Nos. 1888–014, et al.]

Hydroelectric Applications; [York Haven Power Company, et al.]; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. *Type of Application:* Amendment of License.

b. *Project No:* 1888–014.

c. *Date Filed:* 02/02/94.

d. *Applicant:* York Haven Power Company.

e. *Name of Project:* York Haven Project.

f. *Location:* On the Susquehanna River, in the cities of Harrisburg, Lancaster, and York, in Dauphin, Harrisburg, and Lancaster Counties, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. *Applicant Contact:* R. J. Toole, P. O. Box 85, York Haven, PA 17370, (610) 921–6396.

i. *FERC Contact:* Mohamad Fayyad, (202) 219–2665.

j. *Comment Date:* April 28, 1994.

k. *Description of Amendment:* Licensee proposes to amend the license as follows: Replace the original generating units 7 and 8 with a new unit 7. The new unit 7 would consist of two propeller turbines each rated at 2,375 hp with a hydraulic capacity of 1,100 cfs. Both turbines would be linked through two speed increasers to a single horizontal generator rated at 3,600 kW. This replacement would increase the project's hydraulic capacity by 800 cfs and installed capacity by 2,200 kW.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

2a. *Type of Application:* Application to Revise Project Boundary.

b. *Project No:* 2009–005.

c. *Date Filed:* January 19, 1994.

d. *Applicant:* Virginia Electric and Power Company.

e. *Name of Project:* Gaston and Roanoke Rapids Project.

f. *Location:* Roanoke River, Roanoke Rapids County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. Sec. 791(a)–825(r).

h. *Applicant Contact:* Mr. K. G. Higgins, Virginia Electric and Power Company, Real Estate, Post Office Box 26666, Richmond VA 23261, (804) 771–3384.

i. *FERC Contact:* Anum Purchiaroni, (202) 219–3297.

j. *Comment Date:* April 25, 1994.

k. *Description of Project:* Virginia Electric and Power Company.(VEPCO), licensee for the Gaston and Roanoke Rapids Project, filed an application to revise its project boundary. The licensee proposes to sell, to the City of Roanoke Rapids, North Carolina, a parcel of land of approximately 4.7 acres, referred to as Rochelle Pond or Lake Williams Dam. The transfer will take place after VEPCO has repaired the dam and brought it up to the current North Carolina Dam Safety Specifications. This property falls within the boundaries of Gaston and Roanoke Rapids Project owned by VEPCO.

l. *This notice also consists of the following standard paragraphs:* B, C2, and D2.

3a. *Type of Application:* Surrender of License.

b. *Project No:* 4675–039.

c. *Date Filed:* January 28, 1994.

d. *Applicant:* Borough of Charleroi, Pennsylvania, Washington County Board of Commissioners, and Pennsylvania Renewable Resources, Inc.

e. *Name of Project:* Monongahela Lock & Dam No. 4.

f. *Location:* Monongahela River; Washington, Fayette, and Westmoreland Counties, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. section 791(a)–825(r).

h. *Applicant Contact:* Jeffrey M. Kossak, National Renewable Resources, Inc., Gulf & Western Building, 15 Columbus Circle, suite 906, New York, NY 10023, (212) 245–2721.

i. *FERC Contact:* Patricia Massie, (202) 219–2681.

j. *Comment Date:* April 22, 1994.

k. *Description of Surrender:* The licensees state the reason for the

surrender is the substantial decrease in the available energy and capacity rates in the region since the time the license was filed and the escalation in the project costs over the same period of time. As a result, the project is not currently economically feasible. No ground-disturbing activities have occurred at this project.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

4a. *Type of Application:* Transfer of License.

b. *Project No.:* 8459–004.

c. Date Filed: February 17, 1994.

d. *Applicants:* Mr. Geoffrey Shadroui (transferor) and Marble Mill Hydro Corporation (transferee).

e. *Name of Project:* Swanton Dam.

f. *Location:* On the Missisquoi River, in Franklin County, Vermont.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Geoffrey Shadroui, P.O. Box 1250, Barre, VT 05641, (802) 476–4062.

i. *FERC Contact:* Mr. Mark Hooper, (202) 219–2680.

j. *Comment Date:* April 25, 1994.

k. *Description of Transfer:* Transferor proposes transferring his license to facilitate project financing.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

5a. *Type of Application:* Surrender of License.

b. *Project No.:* 8908–038.

c. *Date filed:* January 28, 1994.

d. *Applicant:* Washington County Board of Commissioners, Pennsylvania et al.

e. *Name of Project:* Maxwell Locks and Dam Project.

f. *Location:* On the Monongahela River in Washington County, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r)

h. *Applicant Contact:* Mr. Jeffrey M. Kossak, National Renewable Resources, Inc, Gulf & Western Building, 15 Columbus Circle, suite 906, New York, NY 10023, (212) 245–2721.

i. *FERC Contact:* Hank Ecton, (202) 219–2678.

j. *Comment Date:* April 22, 1994.

k. *Description of Project Action:* The licensee proposed to utilize the existing U.S. Army Corps of Engineers' Maxwell Locks and Dam. No Construction has taken place, and the site remains unaltered. According to the licensee, the project is not currently economically feasible.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

6a. *Type of Application:* Surrender of License.

b. *Project No:* 9167–034.

c. *Date Filed:* January 5, 1994.

d. *Applicant:* New Kernsville Hydro Associates.

e. *Name of Project:* New Kernsville.

f. *Location:* On the Schuylkill River, Berks County, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 USC section 791(a)–825(r).

h. *Applicant Contact:* Kenneth R. Broome, P.E., Managing Partner, New Kernsville Hydro Associates, 15 Fawn Drive, Reading, PA 19607, (215) 775–9399.

i. *FERC Contact:* Patricia Massie, (202) 219–2681.

j. *Comment Date:* April 22, 1994.

k. *Description of Surrender:* It is not feasible to develop this project under present economic circumstances.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

7a. *Type of Application:* Declaration of Intention.

b. *Docket No.:* EL94–33–000.

c. *Date Filed:* February 10, 1994.

d. *Applicant:* James R. Nash.

e. *Name of Project:* Mini Hydro.

f. *Location:* Tributary to Clark Fork River Saunders County, MT.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* James R. Nash, Box 122, Noxon, MT 59853, (406) 847–5510.

i. *FERC Contact:* Hank Ecton, (202) 219–2678.

j. *Comment Date:* April 22, 1994.

k. *Description of Project:* The project will consist of a spring-fed 700-foot-long, 3-inch-diameter pipe and a 1-kilowatt turbine/generator, connected to one home.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

Standard Paragraphs

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C2. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing refers. Any of these documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of a notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Dated: March 21, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 94–7073 Filed 3–24–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–59–001, et al.]

Cove Point LNG Company, L.P., et al. Natural Gas Certificate Filings

March 16, 1994.

Take notice that the following filings have been made with the Commission:

1. Cove Point LNG Company, L.P. and Columbia LNG Corporation

[Docket No. CP94–59–001 and Docket No. CP94–57–001] (Not Consolidated)

Take notice that on March 8, 1994, Cove Point LNG Limited Partnership (Cove Point LNG) filed, in Docket No. CP94–59–001, a notice of name change and an amendment to its certificate application; and Columbia LNG

Corporation ("Columbia LNG") filed, in Docket No. CP94–57–001, an amendment to its abandonment application. Cove Point LNG is amending its application to inform the Commission that effective February 1, 1994, the name of Cove Point LNG Company, L.P., has been changed to Cove Point LNG Limited Partnership and its principal place of business has been changed to 2100 Cove Point Road, Lusby, Maryland 20657.

Additionally, in response to the interventions filed in this proceeding and discussions with this customers and with the Commission's Staff at the February 15, 1994 technical conference held in this proceeding, Cove Point LNG is further amending its application as follows: (i) to modify *pro forma* Rate Schedules FPS–1, FPS–2, and FPS–3 to provide each customer with an option to subscribe to an amount of firm transportation service ("Elected FTS Service") up to the customer's Maximum Daily Peaking Quantity with any demand charges paid for the Elected FTS Service credited toward the customer's firm peaking service charges' (ii) to modify the *pro forma* General Terms and Conditions to permit bids for released firm capacity on a volumetric basis, to provide for direct contracting between Cove Point LNG and assignees when capacity is released for periods of less than one month, to provide for continued service upon the expiration of any initial term of service under defined circumstances and to clarify that penalties will apply only to those volumes in excess of the stated tolerance level; and (iii) to withdraw Cove Point LNG's request for waiver of the blanket construction certificate regulations as such request applied to the Cove Point Terminal and in its stead to request the phasing of recommissioning activities.

Columbia LNG is amending its abandonment application to provide that it will relinquish its abandonment and cost recovery rights against Columbia Transmission upon acceptance by Cove Point LNG of a certificate issued in Docket No. CP94–59–000.

Cove Point LNG and Columbia LNG state that the applications are being amended in order to resolve certain issues raised by the intervenors and the Commission Staff. Cove Point LNG and Columbia LNG further state that in order to meet the needs of their potential customers, certificate authorization is required by June 1994, and accordingly, request that the Commission process their applications, as amended by the current filing, expeditiously.

The amendments to the proposed services are discussed more fully in the filing and the revised a *pro forma* tariff sheets included therewith.

Comment date: April 6, 1994, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

2. Northwest Pipeline Corporation

[Docket No. CP94–276–000]

Take notice that on March 10, 1994, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP94–276–000 a request pursuant to Section 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a new Tenaska Frederickson Meter Station (Frederickson facility), and approximately 1,200 feet of 12 inch pipeline, to connect the proposed Frederickson facility to Northwest's mainline. It is stated that the proposed Frederickson facilities will be used to deliver up to 62,000 MMBtu of natural gas per day to the planned, Tenaska Washington Partners II, L.P. (Tenaska), electric generating plant in Pierce County, Washington, under Northwest's blanket certificate issued in Docket No. CP82–433 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that upon completion of the proposed delivery facilities, Northwest will deliver transportation gas to the Frederickson facility under current Rate Schedule TF–1 transportation agreements with Husky Gas Marketing Inc. and Salmon Resources Ltd., and other authorized shippers. It is stated that Tenaska will require up to 54,000 MMBtu per day of natural gas to serve its planned power plant. Tenaska has contracted to sell the power produced at its Frederickson facility to the Bonneville Power Administration under a 20 year purchase agreement. It is stated that Tenaska Gas Co. (Tenaska Gas) will manage the gas supply and transportation services required for the Frederickson facility. Tenaska and Tenaska Gas have a contractual option to take up to 8,867 MMBtu per day of firm service, through February 28, 2007, it is stated.

Northwest further states that the new Frederickson facility will consist of two 12 inch turbine meters, two 6 inch regulators, a relief valve and appurtenances, and approximately 1,200 feet of 12 inch pipeline to connect the meter station to Northwest's mainline in Pierce County, Washington.

Natural estimates the proposed cost of the Tenaska Frederickson facility to be approximately $1,235,400. Northwest proposes to initially pay for the proposed facilities pursuant to the Facilities Agreement and the facilities reimbursement provisions of Northwest's tariff.

Comment date: May 2, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR

385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–7048 Filed 3–24–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP94–113–000]

Columbia Gas Transmission Corporation and Tennessee Gas Pipeline Company; Technical Conference

March 21, 1994.

Pursuant to the Commission's order issued on March 16, 1994, in the above-captioned proceeding,[1] a technical conference will be convened to address the issues raised by Columbia Gas Transmission Corporation's and Tennessee Gas Pipeline Company's petition for approval of an October 1, 1993 stipulation. The conference will be held on Monday, April 4, 1994, at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 94–7051 Filed 3–24–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–179–000]

Natural Gas Pipeline Company of America; Proposed Changes in FERC Gas Tariff

March 21, 1994.

Take notice that on March 16, 1994, Natural Gas Pipeline Company of America (Natural) tendered for filing to be a part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet Nos. 24 and 317, Second Revised Sheet Nos. 318 through 320, and Original Sheet No. 320A, with a proposed effective date of April 1, 1994.

Natural states that the purpose of the filing is to revise the level of Natural's demand surcharge for the recovery of Account No. 858 costs and the related procedures under Section 21 of the General Terms and Conditions of Natural's FERC Gas Tariff, Sixth Revised Volume No. 1, to reflect discounting adjustments.

Natural requested specific waivers of Section 21 of its Tariff and the Commission's Regulations, including the requirements of Section 154.63, to the extent necessary to permit the tariff sheets to become effective April 1, 1994.

Natural states that copies of the filing are being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 28, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–7050 Filed 3–24–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85–39–016]

Wyoming Interstate Company, Ltd.; Proposed Changes in FERC Gas Tariff

March 21, 1994.

Take notice that on March 17, 1994, Wyoming Interstate Company, Ltd. (WIC), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Original Sheet No. 5A.

WIC states that it tenders the above Tariff sheet pursuant to the Commission's Order dated March 2, 1994, in Docket No. RP85–39–015. WIC states that the filed tariff sheet reflects the monthly reservation charge credit related to excess deferred income tax (DIT). In addition, WIC's filing indicates DIT flowback amounts, including interest through March 14, 1994, due each customer for the period January 1, 1993 through February 28, 1994.

WIC states that copies of its filing were served on all participants listed on the Commission's official service list in this docket, as well as on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in accordance with Section 385.11 of the Commission's Rules and Regulations. All such protests should be filed on or before March 28, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–7049 Filed 3–24–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Research

Basic Energy Sciences Advisory Committee; Open Meeting

Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Basic Energy Sciences Advisory Committee (BESAC).

Date and Time: April 14, 1994—8 a.m.–5 p.m., April 15, 1994—8 a.m.–5 p.m.

Place: U.S. Department of Energy, James Forrestal Building, room 6E–069, 1000 Independence Avenue, SW., Washington, DC 20585.

Contact: Iran L. Thomas, Department of Energy, Office of Basic Energy Sciences (ER–10), Office of Energy Research, Washington, DC 20585, Telephone: 301–903–3081.

Purpose of the Committee: To provide advice on a continuing basis to the Department of Energy (DOE) on the many complex scientific and technical issues that arise in the planning, management, and implementation of the research program for the Office of Basic Energy Sciences (BES).

Tentative Agenda: Briefings and discussions of:

April 14, 1994

- Status of report on BESAC reviews of Ames Laboratory, Pacific Northwest Laboratory, Sandia National Laboratories and Los Alamos National Laboratory.
- Update on Combustion Research Facility (Sandia National Laboratories, Livermore, California).
- Formation of Panel to assess the overall effectiveness of the BES program.
- Public Comment (10 Minute Rule).

[1] 66 FERC ¶ 61,301 (1994).

April 15, 1994

- Continue work on charter and scope of Panel to assess BES program effectiveness.
- New initiatives and future directions for BES program.
- Impact of budget constraints on BES program.
- Public Comment (10 Minute Rule).

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact: Iran L. Thomas at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on March 22, 1994.

Marcia L. Morris,

Deputy Advisory Committee, Management Officer.

[FR Doc. 94–7110 Filed 3–24–94; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4709–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 7, 1994 Through March 11, 1994 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** April 10, 1993 (58 FR 18392).

Draft EISs

ERP No. D–AFS–J65213–MT Rating EC2, Helena National Forest and Elkhorn Mountain portion of the Deerlodge National Forest Land and Resources Management Plan, Oil and Gas Leasing, Implementation, several counties, MT.

Summary: EPA expressed environmental concerns regarding the adequacy of the data presented in the DEIS to describe the existing condition and potential environmental effects to the aquatic resources within the analysis area. EPA also raised concerns regarding the level of protection given to waters of the United States, including wetlands, and the lack of a monitoring plan for various stages in the leasing process.

ERP No. D–AFS–J65214–CO Rating EC2, Sheep Flats, Grove Creek and Valley View Timber Sales, Harvesting Timber and Road Construction, Grand Mesa, Uncompahgre and Gunnison National Forests, Collban District, Mesa County, CO.

Summary: EPA expressed environmental concerns regarding monitoring and evaluation and biological diversity. EPA requested clarifying information in the final document.

ERP No. D–COE–L32009–OR Rating EC2, Coos Bay Channel Deepening Project, Navigation Improvements and Ocean Disposal Sites Designation, OR.

Summary: EPA expressed environmental concerns based on the potential adverse effects to existing beneficial uses of streams. EPA requested additional information about compliance with water quality standards, mitigation effectiveness, cumulative effects, site-specific monitoring, and noise effects.

ERP No. D–TVA–E65041–00 Rating EC2, Land between the Lakes (LBL) Natural Resource Management Plan, Implementation, KY and TN.

Summary: EPA supported TVA alternative E, which provided multiple use and uneven-aged silvaculture. EPA expressed environmental concerns about potential high-grading of timber, nutrient runoff into lakes, and out-dated aquatic plant/blue-green algae information.

ERP No. D–UAF–J11009–CO Rating EC2, Lowry Air Force Base (AFB) Disposal and Reuse, Implementation, Denver County, CO.

Summary: EPA expressed environmental concerns with the November 1993 Lowry reuse plan based on residential use near contaminated areas and recommended further study. Also recommended was conformity information under the Clean Air Act.

ERP No. DS–AFS–J82005–MT Rating LO, Lewis and Clark National Forest Noxious Weed Control Program, Updated Information, Implementation, several countries, MT.

Summary: EPA had no objections to the preferred alternative involving integrated chemical, biological, and manual control of weeds on the Forest, but requested that the FEIS include additional maps and further evaluation of the potential for runoff of herbicides at toxic concentrations into Frenchies Gulch.

Final EISs

ERP No. F–AFS–J65208–MT, Smokey-Corridor Timber Sales, Timber Management and Road Construction/ Reconstruction, Implementation, Lewis and Clark National Forest, White Sulphur Springs, Meagher County, MT.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–COE–G39027–LA, Louisiana Coastal Wetlands Comprehensive Restoration Plan, Implementation and Funding, several parishes, LA.

Summary: EPA expressed environmental concerns that the Corps of Engineers had not demonstrated compliance with all state and federal laws for each of the individual projects included in the Implementation phase. EPA also recommended against relying on the section 404 permitting process to accomplish required NEPA compliance.

ERP No. F–FAA–G51026–TX, New Austin Airport at Bergstrom Air Force Base (AFB) 1993 Master Plan, Approval, Funding, Property Acquisition and Construction, City of Austin, Travis County, TX.

Summary: EPA's environmental concerns on the draft EIS about the alternatives, wetlands impact, air quality and pollution prevention were answered in the Final EIS. EPA asked that additional, clarifying information supporting Alternative F–North be provided in the Record of Decision.

ERP No. F–NPS–J61089–UT, Timpanogos Cave National Monument General Management and Development Concept Plans, Implementation, American Fork Canyon, Utah County, UT.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. FS–AFS–J65193–MT, Beaver-Dry Timber Sales, Timber Harvest and Road Construction, Updated Information, Implementation, Helena National Forest, Lincoln Ranger District, Lewis and Clark and Powell Counties, MT.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

Dated: March 22, 1994.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94–7116 Filed 3–24–94; 8:45 am]

BILLING CODE 6560–50–U–M

[ER–FRL–47096]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed March 14, 1994 through March 18, 1994 Pursuant to 40 CFR 1506.9.

EIS No. 940085, Final EIS, NOA, HI, Pelagic Fisheries of the Western Pacific Region, Amendment 7 to the Fishery Management Plan, Implementation, Exclusive Economic Zone, (EEZ), HI, *Due:* April 25, 1994, *Contact:* Rolland A. Schmitten (301) 713–2239.

EIS No. 940086, Final EIS, FHW, MN, Mankato South Route (Blue Earth C.S.A.H 90) Roadway, Construction, TH–169/TH–60 on the west to TH–83, Funding, Right-of-Way and COE Section 404 Permits, Minnesota, Le Sueur and Blue Earth Rivers, Blue Earth County, MN, *Due:* April 25, 1994, *Contact:* James McCarthy (612) 290–3230.

EIS No. 940087, Draft Supplement, ICC, MT, Tongue River Railroad Additional Rail Line Construction and Operation, Additional Information Concerning the Four Mile Creek Alternative, Ashland to Decker, Approval, Rosebud and Big Horn Counties, MT, *Due:* May 09, 1994, *Contact:* Dana G. White (202) 927–6214.

EIS No. 940088, Final EIS, HUD, CA, Martin Luther King, Jr. Plaza Development on the former Marritt College and University High School Site, Funding and Implementation, City of Oakland, Alameda County, CA, *Due:* April 25, 1994, *Contact:* Brian J. Kalahar (510) 238–3940.

EIS No. 940089, Final EIS, AFS, WA, East Curlew Creek Analysis Area, Harvesting Timber and Road Construction, Portion of Profanity Roadless Area, Colville National Forest, Republic Ranger District, Ferry County, WA, *Due:* April 25, 1994, *Contact:* Patricia Egan (509) 775–3305.

EIS No. 940090, Draft EIS, UAF, NJ, McGuire Air Force Base (AFB) Realignment, Implementation, Burlington County, NJ, *Due:* May 13, 1994, *Contact:* Ms. Jean Reynolds (618) 256–6128.

EIS No. 940091, Draft EIS, UAF, ME, Loring Air Force Base (AFB) Disposal and Reuse, Implementation, Aroostook County, ME, *Due:* May 09, 1994, *Contact:* Ltc. Gary Baumgartel (210) 536–3907.

EIS No. 940092, Draft EIS, SCS, WA, North Fork Hughes River Watershed Plan, Installation of a Multi-purpose Roller Compacted Concrete Dam, Implementation and Funding, Flood Protection and COE Section 404 Permits, Ritchie County, WA, *Due:* May 09, 1994, *Contact:* Rollin N. Swank (304) 291–4152.

EIS No. 940093, Final EIS, COE, LA, MS, LA, West Pearl River Navigation Project, Operation and Maintenance, Portions of West Pearl River to the vicinity of Bagalusa, Implementation, Washington and St. Tammany Parishes, LA and Pearl River County, MS, *Due:* April 25, 1994, *Contact:* Gary Young (601) 631–5960.

Amended Notices

EIS No. 930445, Draft EIS, AFS, MO, Salem and Potosi Ranger Districts Off-Highway Recreational Vehicle Opportunities, Designation/Nondesignation, Mark Twain National Forest, Implementation, Crawford, Dent, Iron, Reynolds, Shannon and Washington Counties, MO, *Contact:* Darsan Wang (314) 364–4621. Published FR 12–23–93—Officially Canceled by Preparing Agency.

EIS No. 940080, Final Supplement, EPA, FL, Tallahassee-Leon County Wastewater Management Plan, Centralization and Decentralization for Wastewater Conveyance and Treatment at the Lake Bradford Road Plant and T.P. Smith Facility, Leon County, FL, *Due:* April 18, 1994, *Contact:* Heinz J. Mueller (404) 347–3776. Published FR 03–18–94—Telephone Number Correction.

Dated: March 22, 1994.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94–7117 Filed 3–24–94; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

[RAO Letter 23; DA 94–217]

Responsible Accounting Officers: ARMIS USOA Report (FCC Report 43–02)—Corrections and Clarification of Certain Tables, Instructions and Specifications

The purpose of this letter is to advise the carriers that file ARMIS USOA Report (FCC Report 43–02) that we are making minor corrections to the report for the 1993 reporting year. These changes are to the Reporting Procedures Section, Report Definition—Forms and Instructions Section, and the Automated Report Specifications Section.

Additionally, on January 31, 1994, the Commission adopted a Report and Order in CC Docket No. 89–360 incorporating the accounting for income taxes set forth in the Financial Accounting Standards Board's Statement of Financial Accounting Standards No. 109, Accounting for Income Taxes (SFAS–109). The Report and Order adds three new accounts to Part 32 of the Rules so that carriers can adopt SFAS–109 for federal accounting purposes in a revenue neutral manner. These new accounts will be added to the ARMIS Report in 1994. The Report and Order does, however, give the carriers the option of adopting the SFAS–109 accounting changes in 1993. Since some carriers may decide to adopt SFAS–109 in 1993, we believe that the following guidance is needed on how to report this action in their 1993 ARMIS reports.

For the 1993 ARMIS reporting purposes, amounts recorded in the new Account 1437, Deferred Tax Regulatory Asset, should be added to the balance in Account 1439, Deferred Charges, and reported on the appropriate row for Account 1439, and amounts recorded in new Accounts 4341, Net Deferred Tax Liability Adjustments, and 4361, Deferred Tax Regulatory Liability, should be added to the balance in Account 4370, Other Jurisdictional Liabilities and Deferred Credits-Net, and reported on the appropriate row for Account 4370. In addition, the balances of Accounts 1437, 4341 and 4361 should be disclosed in a footnote to the appropriate ARMIS reports, e.g., ARMIS Reports 43–01, 43–02 and 43–03.

The corrections to the Reporting Procedures and Report Definition Sections along with the descriptions thereof are contained in Attachment A, and the corrections to the Automated Report Specifications Section are contained in Attachment B.

This letter and attachments are issued under Section 0.291 of the Commission's Rules. Applications for review under Section 1.115 of the Commission's Rules must be filed within 30 days from the date of public notice of this letter.

If you have any questions, contact Kenneth M. Ackerman or Virginia Brockington at (202) 634–1861.

Kenneth P. Moran,

Chief, Accounting and Audits Division, Common Carrier Bureau.

[FR Doc. 94–6769 Filed 3–24–94; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0478

Title: Informational Tariffs

Action: Extension of a currently approved collection

Respondents: Businesses or other for-profit (including small businesses)

Frequency of Response: On occasion reporting requirement

Estimated Annual Burden: 330 responses; 50 hours average burden per response; 16,500 hours total annual burden

Needs and Uses: Providers of interstate operator services are directed by Section 226(h)(1)(A) of the Communications Act, 47 U.S.C. Section 226(h)(1)(A), to file informational tariffs with the Commission and to update these tariffs regularly. The informational tariffs will be maintained for public inspection. The Common Carrier Bureau, at the direction of Congress, will also use the informational tariffs in assessing the compliance of the rates charged by operator service providers (OSPs) with the requirements of the Communications Act.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–7037 Filed 3–24–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1017–DR]

Delaware; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Delaware (FEMA–1017–DR), dated March 16, 1994, and related determinations.

EFFECTIVE DATE: March 16, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 16, 1994, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Delaware, resulting from severe ice storms and flooding on February 8–February 18, 1994, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Delaware.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. You may modify the event time period, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Jack Schuback of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Delaware to have been affected adversely by this declared major disaster.

Kent and Sussex Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dated: March 17, 1994.

James L. Witt,

Director.

[FR Doc. 93–7082 Filed 3–24–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1018–DR]

Kentucky; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–1018–DR), dated March 16, 1994, and related determinations.

EFFECTIVE DATE: March 16, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 16, 1994, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the Commonwealth of Kentucky, resulting from severe weather, including rain, freezing rain, sleet and snow on February 9–11, 1994, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the Commonwealth of Kentucky.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for

Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive order 12148, I hereby appoint Edward A. Thomas of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Kentucky to have been affected adversely by this declared major disaster:

Adair, Allen, Anderson, Barren, Bath, Bell, Boyle, Breathitt, Butler, Casey, Christian, Clark, Clay, Clinton, Cumberland, Edmonson, Elliott, Estill, Garrard, Grayson, Green, Hardin, Harlan, Hart, Jackson, Jessamine, Johnson, Knox, Larue, Laurel, Lawrence, Lee, Lincoln, Logan, Madison, Magoffin, Marion, Martin, McCreary, Menifee, Mercer, Metcalfe, Monroe, Montgomery, Morgan, Muhlenberg, Nelson, Nicholas, Owsley, Perry, Powell, Pulaski, Rockcastle, Rowan, Russell, Simpson, Taylor, Todd, Trigg, Warren, Washington, Wayne, Whitley, and Wolfe Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dated: March 17, 1994.

James L. Witt,

Director.

[FR Doc. 94–7084 Filed 3–24–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1016–DR]

Maryland; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Maryland (FEMA–1016–DR), dated March 16, 1994, and related determinations.

EFFECTIVE DATE: March 16, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 16, 1994, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Maryland, resulting from ice storms on February 8–18, 1994, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Maryland.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide reimbursement for debris removal, emergency protective measures, and the repair of public utilities under the Public Assistance program in the designated areas. Other assistance under Public Assistance may be added at a later date, if warranted. Since information regarding other damages in the State of Maryland is still being gathered, you may modify the event description and/or time period after additional information has been obtained, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period described for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby give that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Jack Schuback of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Maryland to have been affected adversely by this declared major disaster:

Calvert, Caroline, Charles, Dorchester, St. Mary's and Talbot Counties for reimbursement for debris removal, emergency protective measures, and the repair of public utilities under the Public Assistance program.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dated: March 17, 1994.

James L. Witt,

Director.

[FR Doc. 94–7083 Filed 3–24–94; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Carnival Cruise Lines, Inc. and Festivale Maritime Limited, 3655 NW 87th Avenue, Miami, Florida 33178–2428

Vessel: FESTIVALE

Carnival Cruise Lines, Inc. and Jubilee Shipping Company Limited, 3655 NW 87th Avenue, Miami, Florida 33178–2428

Vessel: JUBILEE

Dated: March 21, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 94–7040 Filed 3–24–94; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Seven Seas Cruise Line, Inc. and Hanseatic Tours Reisedienst GmbH (d/b/a Hanseatic Tours), 333 Market Street, suite 2600, San Francisco, California 94105–2102

Vessel: HANSEATIC

Dated: March 21, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 94–7039 Filed 3–24–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Cambridgeport Mutual Holding Company; Change in Bank Control Notice; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 94–5892) published on page 11788 of the issue for Monday, March 14, 1994.

Under the Federal Reserve Bank of Boston heading, the entry for Cambridgeport Mutual Holding Company is revised to read as follows:

1. Cambridgeport Mutual Holding Company, Cambridge, Massachusetts, to become a bank holding company by acquiring 100 percent of the voting shares of Cambridgeport Savings Bank, Cambridge, Massachusetts. Cambridgeport Savings Bank, upon the reorganization, will continue to participate in the Massachusetts Savings Bank Life Insurance program. Cambridgeport Mutual Holding Company has also applied to retain a 5.6 percent interest in Cambridge Bancorp, Cambridge, Massachusetts, and thereby control Cambridge Trust Company, Cambridge, Massachusetts.

Comments on this application must be received by April 7, 1994.

Board of Governors of the Federal Reserve System, March 21, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–7085 Filed 3–24–94; 8:45 am]

BILLING CODE 6210–01–M

CoreStates Financial Corp., et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 18, 1994.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. CoreStates Financial Corp., Philadelphia, Pennsylvania; to acquire Independence Life Insurance Company, Phoenix, Arizona, and thereby engage in acting as a reinsurer of credit life, accident and health insurance in connection with extensions of credit by its bank subsidiaries, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Waukegan Corporation, Gurnee, Illinois; to acquire Hometown Finance Corporation, Glenview, Illinois, and Hometown Finance Corporation, Waukegan, Illinois; and thereby engage in the nonbanking activity of operating a consumer finance company through the acquisition of 100 percent of the outstanding voting shares of Hometown Finance Corporation, Glenview, Illinois, pursuant to § 225.25(b)(1) of the Board's Regulation Y, and to engage in the nonbanking activity of acting as agent or broker for insurance directly related to an extension of credit by Hometown Finance Corporation, pursuant to § 225.25(b)(8)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 21, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-7086 Filed 3-24-94; 8:45 am]

BILLING CODE 6210-01-F

First National Sylacauga Corporation, et al.; Notice of Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 14, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First National Sylacauga Corporation, Sylacauga, Alabama, to engage *de novo* through its subsidiary Frontier Financial Services, Inc., Sylacauga, Alabama, in credit-related insurance agency and underwriting activites, pursuant to § 225.25(b)(8)(i) and (ii) of the Board's Regulation Y.

2. Pickens County Bancshares, Inc., Reform, Alabama, to retain its subsidiary WAB&T Financial Services, Inc., Reform, Alabama, which commenced engaging *de novo* in insurance agency and underwriting activities, pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y, and in providing securities brokerage services, and related securities credit activities, pursuant to § 225.25(b)(15) of the Board's Regulation Y. The proposed activity will be conducted throughout Pickens, Fayette, Sumter, and Choctaw Counties, Alabama.

Board of Governors of the Federal Reserve System, March 21, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-7087 Filed 3-24-94; 8:45 am]

BILLING CODE 6210-01-F

Ohio State Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding

Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 18, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Ohio State Bancshares, Inc., Marion, Ohio, to become a bank holding company by acquiring 100 percent of the voting shares of The Marion Bank, Marion, Ohio.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Commonwealth Community Bancorp., Inc., Grundy, Virginia, to become a bank holding company by acquiring 100 percent of the voting shares of Miners and Merchants Bank and Trust Company, Grundy, Virginia.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. The Templar Fund, Inc., Brentwood, Missouri, to become a bank holding company by acquiring 100 percent of the voting shares of Truman Bancorporation, Inc., Brentwood, Missouri, and thereby indirectly acquire U.S. National Bank of Clayton, St. Louis, Missouri.

2. Truman Bancorporation, Inc., Brentwood, Missouri, to acquire at least 26 percent of the voting shares of U.S. National Bank of Clayton, St. Louis, Missouri.

Board of Governors of the Federal Reserve System, March 21, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-7088 Filed 3-24-94; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

[GSA Bulletins FTR 12 and 13]

Federal Travel Regulation; Reimbursement of Higher Actual Subsistence Expenses for Travel to Augusta, Georgia and Oshkosh, Wisconsin

AGENCY: Federal Supply Services, GSA.

ACTION: Notice of bulletins.

SUMMARY: The attached bulletins inform agencies of the establishment of a special actual subsistence expense ceiling for official travel to Augusta (Richmond County), Georgia and Oshkosh (Winnebago County), Wisconsin. The Secretary of Transportation (DOT) requested establishment of the increased rates to accommodate employees who perform temporary duty in either of the two localities and who experience a temporary but significant increase in lodging costs due to the escalation of lodging rates during the annual Masters Golf Tournament in Augusta, or the annual Experimental Aircraft Association Convention and Show in Oshkosh.

EFFECTIVE DATES: This special rate is applicable to claims for reimbursement covering travel to Augusta, Georgia during the period April 4 through April 10, 1994; and to Oshkosh, Wisconsin during the period July 28 through August 3, 1994.

FOR FURTHER INFORMATION CONTACT: Jane E. Groat, General Services Administration, Transportation Management Division (FBX), Washington, DC 20406, telephone 703–305–5745.

SUPPLEMENTARY INFORMATION: The Administrator of General Services, pursuant to 41 CFR 301–8.3(c) and at the official request of the Secretary of Transportation, has increased the maximum daily amount of reimbursement that may be approved for actual and necessary subsistence expenses for official travel to Augusta (Richmond County), Georgia for travel during the period April 4 through April 10, 1994, and to Oshkosh (Winnebago County), Wisconsin for travel during the period July 28 through August 3, 1994. The attached GSA Bulletins FTR 12 and 13 are issued to inform agencies of the establishment of these special actual subsistence expense ceilings.

Dated: March 17, 1994.

Allan W. Beres,

Assistant Commissioner, Transportation and Property Management.

Attachment 1

[GSA Bulletin FTR 12]
March 17, 1994.

To: Heads of Federal agencies
Subject: Reimbursement of higher actual subsistence expenses for travel to Augusta (Richmond County), Georgia

1. *Purpose.* This bulletin informs agencies of the establishment of a special actual subsistence expense ceiling for official travel to Augusta (Richmond County), Georgia, due to the escalation of lodging rates during the annual Masters Golf Tournament held there. This special rate applies to claims for reimbursement covering travel during the period April 4, 1994, through April 10, 1994.

2. *Background.* The Federal Travel Regulation (FTR) (41 CFR chapters 301–304) part 301–8 permits the Administrator of General Services to establish a higher maximum daily rate for the reimbursement of actual subsistence expenses of Federal employees on official travel to an area within the continental United States. The head of an agency may request establishment of such a rate when special or unusual circumstances result in an extreme increase in subsistence costs for a temporary period. The Secretary of Transportation (DOT) requested establishment of such a rate for Augusta to accommodate employees who perform temporary duty there and experience a temporary but significant increase in lodging costs due to the escalation of lodging rates during the annual Masters Golf Tournament. These circumstances justify the need for higher subsistence expense reimbursement in Augusta during the designated period.

3. *Maximum rate and effective date.* The Administrator of General Services, pursuant to 41 CFR 301–8.3(c), has increased the maximum daily amount of reimbursement that may be approved for actual and necessary subsistence expenses for official travel to Augusta (Richmond County), Georgia for travel during the period April 4, 1994, through April 10, 1994. Agencies may approve actual subsistence expense reimbursement not to exceed $210.00 ($184.00 maximum for lodging and a $26.00 allowance for meals and incidental expenses) for travel to Augusta (Richmond County), Georgia, during this time period.

4. *Expiration date.* This bulletin expires on September 30, 1994.

5. *For further information contact.* Jane E. Groat, General Services Administration, Transportation Management Division (FBX), Washington, DC 20406, telephone 703–305–5745.

By delegation of the Commissioner, Federal Supply Service.

Allan W. Beres,

Assistant Commissioner, Transportation and Property Management.

Attachment 2

[GSA Bulletin FTR 13]
March 17, 1994.

To: Heads of Federal agencies

Subject: Reimbursement of higher actual subsistence expenses for travel to Oshkosh (Winnebago County), Wisconsin

1. *Purpose.* This bulletin informs agencies of the establishment of a special actual subsistence expense ceiling for official travel to Oshkosh (Winnebago County), Wisconsin, due to the escalation of lodging rates during the annual Experimental Aircraft Association Convention and Show held there. This special rate applies to claims for reimbursement covering travel during the period July 28, 1994, through August 3, 1994.

2. *Background.* The Federal Travel Regulation (FTR) (41 CFR chapters 301–304) part 301–8 permits the Administrator of General Services to establish a higher maximum daily rate for the reimbursement of actual subsistence expenses of Federal employees on official travel to an area within the continental United States. The head of an agency may request establishment of such a rate when special or unusual circumstances result in an extreme increase in subsistence costs for a temporary period. The Secretary of Transportation (DOT) requested establishment of such a rate for Oshkosh to accommodate employees who perform temporary duty there and experience a temporary but significant increase in lodging costs due to the escalation of lodging rates during the annual Experimental Aircraft Association Convention and Show. These circumstances justify the need for higher subsistence expense reimbursement in Oshkosh during the designated period.

3. *Maximum rate and effective date.* The Administrator of General Services, pursuant to 41 CFR 301–8.3(c), has increased the maximum daily amount of reimbursement that may be approved for actual and necessary subsistence expenses for official travel to Oshkosh (Winnebago County), Wisconsin for travel during the period July 28, 1994, through August 3, 1994. Agencies may approve actual subsistence expense reimbursement not to exceed $149.00 ($119.00 maximum for lodging and a $30.00 allowance for meals and incidental expenses) for travel to Oshkosh (Winnebago County), Wisconsin, during this time period.

4. *Expiration date.* This bulletin expires on September 30, 1994.

5. *For further information contact* Jane E. Groat, General Services Administration, Transportation Management Division (FBX), Washington, DC 20406, telephone 703–305–5745.

By delegation of the Commissioner, Federal Supply Service.

Allan W. Beres,

Assistant Commissioner, Transportation and Property Management.

[FR Doc. 94–7053 Filed 3–24–94; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93612–943]

Administration for Native Americans: Availability of Financial Assistance

AGENCY: Administration for Native Americans (ANA), Administration for Children and Families (ACF), Department of Health and Human Services, (HHS).

ACTION: Announcement of availability of competitive financial assistance to assist eligible applicants in assuring the survival and continuing vitality of their Native American languages.

SUMMARY: The Administration for Native Americans (ANA) announces the availability of fiscal year 1994 funds for Native American Language projects. Financial assistance provided by ANA is designed to assist applicants in designing projects which will promote the survival and continuing vitality of Native American languages.

DATES: The closing date for submission of applications is June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Gerald E. Gipp (202) 690–6662 or Ginny Gorman (202) 401–7260, Administration for Native Americans, Department of Health and Human Services, 200 Independence Avenue, SW., rm 348F, Washington, DC 20201–0001.

SUPPLEMENTARY INFORMATION:

A. Introduction and Purpose

The program announcement states the availability of fiscal year 1994 financial assistance to eligible applicants for the purpose of assisting Native Americans in assuring the survival and continuing vitality of their languages. Financial assistance awards made under this program announcement will be on a competitive basis and the proposals will be reviewed against the evaluation criteria in this announcement.

The Congress has recognized that the history of past policies of the United States toward Indian and other Native American languages has resulted in a dramatic decrease in the number of Native American languages that have survived over the past five hundred years. Consequently, the "Native American Languages Act" was enacted (Title I, Pub. L. 101–477) to address this decline.

This legislation invested the United States government with the responsibility to work together with Native Americans to ensure the survival of cultures and languages unique to Native America. This law declared that it is the policy of the United States to "preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native American languages." While the Congress made a significant first step in passing this legislation in 1990, it served only as a declaration of policy. No program initiatives were proposed, nor any funds authorized to enact any significant programs in furtherance of this policy.

In 1992, Congressional testimony provided estimates that of the several hundred languages that once existed, only about one hundred and fifty-five (155) languages are still spoken or remembered today. However, only 20 are spoken by persons of all ages, 30 are spoken by adults of all ages, about 60 are spoken by middle-aged adults, and 45 are spoken only by the most elderly.

In response to this testimony, the Congress passed P.L. 102–524, "the Native American Languages Act of 1992" (the Act) to assist Native Americans in assuring the survival and continuing vitality of their languages. Passage of the Act is an important second step in attempting to ensure the survival and continuation of Native American languages, as it provides the basic foundation upon which the Tribal nations can rebuild their economic strength and rich cultural diversity.

While the Federal government recognizes that substantial loss of Native American languages has occurred over the past several hundred years, the nature and magnitude of the status of Native American languages will be better defined when eligible applicants under the Act have completed language assessments.

The Administration for Native Americans (ANA) believes that responsibility for achieving self-sufficiency rests with the governing bodies of Indian tribes, Alaska Native villages, and in the leadership of Native American groups. This belief supports the ANA principle that the local community and its leadership are responsible for determining goals, setting priorities, and planning and implementing programs which support the community's long range goals.

Therefore, since preserving a language and ensuring its continuation is generally one of the first steps taken toward strengthening a group's identity, activities proposed under this program announcement will contribute to the social development of a native community and significantly contribute to its path toward self-sufficiency.

The Administration for Native Americans recognizes that eligible applicants must have the opportunity to develop their own language plans, technical capabilities and access to the necessary financial and technical resources in order to assess, plan, develop and implement programs to assure the survival and continuing vitality of their languages. ANA also recognizes that potential applicants may have specialized knowledge and capabilities to address specific language concerns at various levels. This program announcement reflects these special needs and circumstances.

B. Proposed Projects To Be Funded in FY 1994

The purpose of this announcement is to invite single year or up to thirty-six month proposals from eligible applicants to undertake any one of the identified purposes, as appropriate to the applicant. Planning Grants, funded under Category I, are limited to 12 months.

Applicants may apply for projects of up to 36 months duration under Category II, Design and/or Implementation Grants. A multi-year project, requiring more than 12 months to develop and complete, affords applicants the opportunity to develop more complex and in-depth projects. Funding after the first 12 month budget period of an approved multi-year project is non-competitive and subject to availability of funds. (see Part E for further information)

1. Category I—Planning Grants

The purpose of the planning grants is to conduct the assessment and planning needed to identify the current status of the Native American language(s) to be addressed and to establish community long-range language goals. These activities must include, but are not limited to, the following:

- Data collection, compilation and analysis to ascertain current language status through "formal" (e.g., work performed by a linguist, and/or a language survey conducted by community members) or "informal" (e.g., a community consensus of the language status based on elders, tribal scholars, and/or other community members) methods;
- Establishment of the community's long-range language goals; and
- Acquisition of the necessary training and technical assistance to assure the achievement of the project goals.

2. Category II—Design and/or Implementation Grants

The purpose of design/or implementation grants is to allow communities to design and/or implement, as appropriate to the applicant, a language program or programs that will contribute to the achievement of the community's long-range language goal(s). Applicants under Category II must be able to document that: (a) Language statistics have been collected and analyzed, and that these statistics are current (compiled within thirty-six months prior to the grant application); (b) that the community has established long-range language goals; and (c) that community representatives are adequately trained to achieve the proposed project goals.

Under Category II grants, applicants may include the purchase of specialized equipment (including audio and video recording equipment, computers, and software) which is necessary to accomplish project objectives. The applicant must fully justify the need for this equipment and explain how it will assist them in achieving their project objectives.

The types of activities ANA is seeking to fund under Category II grants include, but are not limited to, the following:

- Establishment and support of community Native American language projects to bring older and younger Native Americans together to facilitate and encourage the transfer of Native American languages skills from one generation to another;
- Establishment of projects to train Native Americans to teach Native American languages to others or to enable them to serve as interpreters or translators of such languages;
- Development, printing, and dissemination of materials to be used for the teaching and enhancement of Native American languages;
- Establishment or support of projects to train Native Americans to produce or participate in television or radio programs to be broadcast in Native American languages; and
- Compilation, transcription, and analysis of oral testimony to record and preserve Native American languages.

The Institute of American Indian and Alaska Native Culture and Arts Development is established by the Act as the repository for copies of products from Native American language grants funded under this program announcement. Products of Native American language grants funded by this program announcement must be transmitted to this designated repository. Federally recognized Indian Tribes (as listed by the Bureau of Indian Affairs in an October 21, 1993 **Federal Register** notice) are not required to comply with this provision.

C. Eligible Applicants

The following organizations are eligible to apply for funding under this program announcement:

- Federally recognized Indian tribes (as listed by the Bureau of Indian Affairs in an October 21, 1993 **Federal Register** notice);
- Incorporated Non-Federally recognized Indian tribes;
- Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANSCA) and/or nonprofit village consortia;
- Nonprofit Alaska Native Regional Associations with village specific projects;
- Nonprofit Native organizations in Alaska with village specific projects;
- Incorporated nonprofit multi-purpose community-based Indian organizations;
- Urban Indian Centers;
- Public and nonprofit private agencies serving Native Hawaiians;
- National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives;
- Public and nonprofit private agencies serving native peoples from Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands (The populations served may be located on these islands or in the United States.); and
- Tribally Controlled Community Colleges, Tribally Controlled Post-Secondary Vocational Institutions, and colleges and universities located in Hawaii, Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands which serve Native American Pacific Islanders.

In addition, current ANA SEDS grantees are also eligible to apply for a grant award under this program announcement.

Participating Organizations

If a tribal organization, or other eligible applicant, decides that the objectives of its proposed Native American language project would be accomplished more effectively through a partnership arrangement with a school, college, or university, the applicant shall identify such school, college, or university as a participating organization in its application. Under a partnership agreement, the applicant will be responsible for the fiscal,

administrative and programmatic management of the grant.

D. Available Funds

Subject to availability of funds, ANA estimates that approximately $1,000,000 is available for financial assistance in FY 1994 under this program announcement. For Category I, Planning Grants, the funding level for a budget period of 12 months will be up to $50,000. For Category II, Design and/or Implementation Grants, the funding level for a budget period of 12 months will be up to $125,000.

Each eligible applicant can receive only one grant award under this announcement. The Administration for Native Americans will accept only one application from any one applicant. If an eligible applicant sends in two applications, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.

E. Multi-Year Projects

This announcement is soliciting applications for project periods up to three years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the one-year budget period, but within the three-year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the Government.

F. Grantee Share of Project

Grantees must provide at least twenty (20) percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions.

The non-Federal share may include funds distributed to a tribe, including interest, by the Federal government:

- Pursuant to the satisfaction of a claim made under Federal law;
- From funds collected and administered on behalf of such tribe or its constituent members; or
- For general tribal administration or tribal development under a formula or subject to a tribal budgeting priority system, such as, but not limited to, funds involved in the settlement of land or other judgment claims, severance or other royalty payments, or payments under the Indian Self-Determination Act (25 U.S.C. 450f et seq.) or tribal budget priority system.

Therefore, a project requesting $300,000 in ACF funds (based on an award of $100,000 per budget period), must include a match of at least $75,000 (20% total project cost). An itemized budget detailing the applicant's non-Federal share, and its source, must be included in an application.

Applications submitted as a partnership arrangement with a school, college, or university, may use contributions from the "partner" organization(s) to meet the non-Federal share, as appropriate. Applications originating from American Samoa, Guam, Palau, or the Commonwealth of the Northern Mariana Islands are covered under section 501(d) of Public Law 95–134, as amended (48 U.S.C. 1469a) under which HHS waives any requirement for local matching funds under $200,000 (including in-kind contributions).

G. Intergovernmental Review of Federal Programs

This program is not covered by Executive Order 12372.

H. The Application Process

1. Availability of Application Forms

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied, including Form-424, and in the manner prescribed by ANA. The application kits containing the necessary forms and instructions may be obtained from: Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans; Room 348F, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201–0001, Telephone: (202) 401–7260, Attention: No. 93612–943.

2. Application Submission

Each application should include one signed original and two (2) copies of the grant application, including all attachments. These include the forms on: drug free workplace; debarment; and anti-lobbying. Assurances and certifications must be completed. The application must be hand delivered or mailed by the closing date to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 6th Floor, Aerospace Building, 370 L'Enfant Promenade SW., Washington, DC 20447, Attention: William J. McCarron, ANA No. 93612–943

The application must be signed by an individual authorized: (1) to act for the applicant tribe, village or organization, and (2) to assume the applicant's obligations under the terms and conditions of the grant award.

3. Application Consideration

The Commissioner of the Administration for Native Americans determines the final action to be taken with respect to each grant application received under this announcement.

The following points should be taken into consideration by all applicants:

- Incomplete applications and applications that do not otherwise conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ANA.
- Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process. An independent review panel consisting of reviewers familiar with Native American languages will evaluate each application against the published criteria in this announcement. The results of this review will assist the Commissioner in making final funding decisions.
- The Commissioner's decision will also take into account the comments of ANA staff, state and Federal agencies having performance related information, and other interested parties.
- As a matter of policy the Commissioner will make grant awards consistent with the stated purpose of this announcement and all relevant statutory and regulatory requirements under 45 CFR parts 74 and 92 applicable to grants under this announcement.
- After the Commissioner has made decisions on all applications, unsuccessful applicants will be notified in writing within approximately 120 days of the closing date. Successful applicants are notified through an official Financial Assistance Award (FAA) document. The Administration for Native Americans staff cannot respond to requests for funding decisions prior to the official notification to the applicants. The FAA will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-Federal matching share requirement.

I. Review Process and Criteria

1. Initial Application Review

Timely applications submitted under this announcement will undergo a pre-review to determine that:

- The applicant is eligible in accordance with the Eligible Applicants Section of this announcement.
- The application materials submitted are sufficient to allow the panel to undertake an in-depth evaluation (All required materials and forms are listed in the Grant Application Checklist.)

2. Determination of Ineligibility

Applicants who are initially rejected from competitive evaluation because of ineligibility, may appeal an ANA decision of applicant ineligibility. Likewise, applicants may also appeal an ANA decision that an applicant's proposed activities are ineligible for funding consideration. Section 810(b) (42 U.S.C. 2991h) of the Native American Programs Act provides for an appeals process when ANA determines that an organization or activities are ineligible for assistance. When an applicant or the activities proposed by the applicant are rejected as ineligible, the applicant will be advised of the appropriate appeal process.

3. Competitive Review of Accepted Applications

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of the evaluation criteria. These criteria are used to evaluate the quality of a proposed project, and to determine the likelihood of its success. A proposed project should reflect the purposes stated and described in the Introduction and Program Purpose (Section A) of this announcement. The evaluation criteria are:

(1) Current Status of Native American Language(s) Addressed and Description(s) of Existing Programs/Projects (if any) Which Support the Language(s) Addressed. (10 Points)

(a) The application fully describes the current status of the Native American language to be addressed; current status is defined as data compiled within the previous thirty-six (36) months. The description of the current status minimally includes the following information: (1) Number of speakers; (2) age of speakers; (3) gender of speakers; (4) level(s) of fluency; (5) number of first language speakers (the Native language is the first language acquired); (6) number of second language speakers (the Native language is the second language acquired); (7) where the language is used (specific uses such as: home, court system, religious ceremonies, church, multimedia, school, governance activities and other, as appropriate to applicant) (8) source of data; (formal and/or informal) and (9) rate of language loss or gain. The application has clearly delineated the current status of the Native American language to be addressed by the project.

(b) The application fully describes existing community language or language training programs and projects, if any, in support of the Native American language to be addressed by the proposed project. Existing programs and projects may be formal (e.g., work performed by a linguist, and/or a language survey conducted by community members) or informal (e.g., a community consensus of the language status based on elders, tribal scholars, and/or other community members). The description should address the following: (1) Has applicant had a community language or language training program within the last thirty-six (36) months? (2) Has applicant had a community language or language training program within the last ten (10) years? Applicants that answer "no" to either question (1) or (2) should provide a detailed explanation of what barriers or circumstances prevented the establishment or implementation of a community language program. Applicants that answer "yes" to either questions (1) or (2) should describe recent language program, including: (1) program goal(s); (2) number of program participants; (3) number of speakers; (4) age range of participants (e.g., 0–5; 6–10; 11–18;, etc.); (5) number of language teachers; (6) criteria used to acknowledge competency of language teachers; (7) resources available to applicant (e.g., valid grammars, dictionaries, and/or orthographics. If there are other suitable resources, please describe); and (8) other outcomes.

(2) Long-Range Goals and Available Resources (25 Points)

(a) The application explains how specific Native American(s) long range community goals relate to the project. Goals are described within the context of the applicant's current language status. The strategies described will assist in assuring the survival and continued vitality of the Native American language(s) addressed.

(b) The application explains how the community and existing tribal government (where one exists) intends to achieve these goals. It clearly documents the involvement and support of the community members and languages Elders in the planning process and implementation of the proposed project as appropriate (e.g., tribal resolutions, minutes of Community meetings, etc.).

(c) Available resources (other than ANA and the non-Federal share) which will assist, and be coordinated with the project, including language Elders, and other community resources, are described. These resources may be human, physical, or financial and may include other Federal and non-Federal resources. Reasonable assurances of commitment are provided. If the applicant proposes to enter into a partnership arrangement with a school, college, or university, documentation of this commitment must be included in the application.

(3) Project Objectives, Approach and Activities (25 Points)

The application proposes specific project objective work plans with activities related to the goal to ensure the survival and continuing vitality of the Native American language(s). The objective work plan(s) in the application include(s) project objectives and activities related to the long term goals for each budget period proposed which:

- Clearly indicate Tribal Government, as appropriate, and community's active involvement demonstrating continuing participation of Native American speakers;
- Are measurable and/or quantifiable in terms of results and outcomes;
- Clearly relate to the community's long-range language goals which the project addresses;
- Can be accomplished with available or expected resources during the proposed project period;
- Indicate when the objective, and major activities under each objective will be accomplished;
- Specify who will conduct the activities under each objective; and
- Support a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) Evaluation Plan (15 Points)

The proposed objectives will result in specific, measurable outcomes to be achieved that will clearly contribute to the completion of the overall project and will help the applicant meet its goal to ensure the survival and continuing vitality of the Native American language(s) addressed. A detailed evaluation plan is provided to measure project outcomes, including, but not limited to, a demonstration of effective language growth (e.g., increase of "language use").

(5) Replication Plan and Product Preservation Plan (10 Points)

(a) Identify opportunities for the replication of the project or the modification of the project for use by other Native Americans, if appropriate. If replication is not appropriate, applicant must provide reasons why replication is inappropriate.

(b) Describe the plan for the preservation of the products of the Native American language project for the benefit of future generations of Native Americans and other interested persons.

(6) Organizational Capabilities/ Qualifications and Budget (15 Points)

(a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is well defined. The application clearly demonstrates the successful management of prior or current projects of similar scope by the organization and/or by the individuals designated to manage the project.

(b) Position descriptions or resumes of key personnel, including those of consultants, are presented. The position descriptions and resumes relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions clearly describe the position and its duties and clearly relate to the personnel staffing required for implementation of the project activities. Either the position descriptions or the resumes present the qualifications that the applicant believes are necessary for overall quality management of the project.

(c) There is a detailed budget provided for each budget period requested which is fully explained. It justifies each line item in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source. Sufficient cost and other detail is included and explained to facilitate the determination of cost allowability and the relevance of these costs to the proposed project. The funds requested are appropriate and necessary for the scope of the project.

J. Guidance to Applicants

The following is provided to assist applicants to develop a competitive application.

1. Program Guidance

• The Administration for Native Americans will fund projects that present the strongest prospects for meeting the stated purposes of this program announcement. Projects will not be funded on the basis of need alone.

• In discussing the problems being addressed in the application, relevant historical data should be included so that the appropriateness and potential benefits of the proposed project will be better understood by the reviewers and decision-maker.

• Supporting documentation, if available, should be included to provide the reviewers and decision-maker with other relevant data to better understand the scope and magnitude of the project.

• The applicant should provide documentation showing support for the proposed project from authorized officials, board of directors and/or officers through a letter of support or resolution. It would be helpful, particularly for organizations, to delineate the membership, make-up of the board of directors, and its elective procedures to assist reviewers in determining authorized support.

• Language preservation is defined as the maintenance of a language so that it will not decline to non-use.

• Language vitality is defined as the active use of a language in a wide range of domains of human life.

• Language replication is defined as the application of a language program model developed in one community to other linguistically similar communities.

• Language survival is defined as the maintenance and continuation of language from one generation to another in a wide range of aspects of community life.

2. Technical Guidance

• Applicants are strongly encouraged to have someone other than the author apply the evaluation criteria in the program announcement and to score the application prior to its submission, in order to gain a better sense of its quality and potential competitiveness in the review process.

• ANA will accept only one application under this program announcement from any one applicant. If an eligible applicant sends two applications, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.

• An application from an Indian tribe, Alaska Native Village or other eligible organization must be submitted by the governing body of the applicant.

• The application's Form 424 must be signed by the applicant's representative (tribal official or designate) who can act with full authority on behalf of the applicant.

• The Administration for Native Americans suggests that the pages of the application be numbered sequentially from the first page and that a table of contents be provided. Tabbing of the sections of the application is also recommended.

• Two (2) copies of the application plus the original are required.

• The Cover Page should be the first page of an application, followed by the one-page abstract.

• Section B of the Program Narrative should be of sufficient detail as to become a guide in determining and tracking project goals and objectives.

• The applicant should specify the entire length of the project period on the first page of the Form 424, Block 13, not the length of the first budget period. ANA will consider the project period specified on the Form 424 as governing.

• Line 15a of the Form 424 should specify the Federal funds requested for the first Budget period, not the entire project period.

• Applicants proposing multi-year projects need to describe and submit project objective workplans and activities for each budget period. (Separate itemized budgets for the Federal and non-Federal costs should be included.)

• Applicants for multi-year projects must justify the entire time-frame of the project and also project the expected results to be achieved in each budget period and for the total project period.

3. Projects or Activities That Generally Will Not Meet the Purposes of This Announcement.

• Core administration functions, or other activities, that essentially support only the applicant's on-going administrative functions.

• Proposals from consortia of tribes or villages that are not specific with regard to support from, and roles of, member tribes.

• Projects that will not be completed, self-sustaining, or supported by other than ANA funds at the end of the project period.

• Projects originated and designed by consultants who provide a major role for themselves in the proposed project, and are not members of the applicant organization, tribe, or village.

• The purchase of real estate or construction.

K. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record keeping

requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for ANA grant applications under the Program Narrative Statement by OMB.

L. Due Date for Receipt of Applications

The closing date for applications submitted in response to this program announcement is 90 days from date of publication in the **Federal Register**.

M. Receipt of Applications

Applications must either be hand delivered or mailed to the address in Section H, Application Process: Application Submission. ANA will not accept applications submitted via facsimile (FAX) equipment.

Deadlines

Applications shall be considered as meeting the announced deadline if they are either:

1. Received on or before the deadline date at the place specified in the program announcement; or

2. Sent on or before the deadline date and received by ACF in time for the independent review under DHHS GAM Chapter 1–62. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private Metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications

Applications which do not meet the criteria above are considered late applications. The Administration for Children and Families shall notify each late applicant that its application will not be considered in the current competition.

Extension of Deadlines

The Administration for Children and Families may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

(Catalog of Federal Domestic Assistance Program Number 93.612 Native American Programs)

Dated: March 14, 1994.

Dominic J. Mastrapasqua,

Acting Commissioner, Administration for Native Americans.

[FR Doc. 94–7142 Filed 3–24–94; 8:45 am]

BILLING CODE 4184–01–P

Centers for Disease Control and Prevention

Advisory Committee for Injury Prevention and Control (ACIPC): Change in Location for One Session of Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 59 FR 10821 Dated March 8, 1994.

SUMMARY: Notice is given that the afternoon session (1:30 p.m.–5 p.m.) on March 28 will be held in Auditorium B at the Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Atlanta, Georgia 30333. The location has been changed to allow the CDC Director to participate in that session through video teleconferencing. The remainder of the agenda, times, and location as announced in the original notice are unchanged.

CONTACT PERSON FOR MORE INFORMATION: Richard J. Waxweiler, Ph.D., Acting Executive Secretary, ACIPC, National Center for Injury Prevention and Control, CDC 4770 Buford Highway NE., Mailstop F–41, Atlanta, Georgia 30341–3724, telephone 404/488–4031.

Dated: March 21, 1994.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–7190 Filed 3–24–94; 8:45 am]

BILLING CODE 4163–18–M

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Clinical Development of a Live, Attenuated Cold-Adapted Influenza Virus Vaccine(s)

AGENCY: National Institutes of Health, PHS, HHS.

ACTION: Notice.

SUMMARY: The National Institute of Allergy and Infectious Diseases (NIAID) of the National Institutes of Health announces its intention to make available, to all interested and capable parties, information related to the clinical development of a live, attenuated cold-adapted influenza virus vaccine(s). Briefly, under IND 601 (Investigational New Drug #), the NIAID has supported the clinical research development of this experimental vaccine(s). The NIAID is interested in having these efforts utilized for the public good by transferring this information to a company with an interest in the development and licensure of the cold-adapted vaccine. The information in the IND 601 will be available for confidential evaluation to interested and capable parties for a period of 45 days. This information will be made available to representatives of companies at a site in Bethesda, Maryland, following the execution of a Confidentiality Agreement. Copies of the material may be made at this site, by company representatives, at a nominal fee to cover copying cost. Following this 45 day evaluation period, the NIAID will entertain proposals from any companies interested in pursuing the development of this product, for a period not to exceed 30 days. Scheduling for review of documents will occur on a first come, first serve basis but only after receipt of an executed Confidentiality Agreement.

ADDRESSES: Proposals should be submitted to: Technology Transfer Branch, National Institute of Allergy & Infectious Diseases, National Institutes of Health, Bldg. 31, rm. 7A32, 9000 Rockville Pike, Bethesda, MD 20892. If you are interested in obtaining a copy of the Confidentiality Agreement and arranging for an appointment, please contact Dr. Carole Heilman, Chief, Respiratory Disease Branch, National Institute of Allergy & Infectious Diseases, National Institutes of Health, Solar Building, 6003 Executive Blvd., room 3B06, Rockville, Maryland, 20852, or telephone 301–496–5305.

DATES: Proposals must be submitted on or before April 25, 1994.

Dated: March 7, 1994.

Donald P. Christoferson,

Acting Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 94–7033 Filed 3–24–94; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the following Heart, Lung, and Blood Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning

individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: NHLBI SEP on Genetically Enhanced Cardiovascular Implants.
Date of Meeting: April 11, 1994.
Time of Meeting: 9 a.m.
Place of Meeting: Holiday Inn, Bethesda, Maryland.
Agenda: To evaluate and review grant applications.
Contact Person: Carl A. Ohata, Ph.D., 5333 Westbard Avenue, room 5A09, Bethesda, Maryland 20892, (301) 594–7483.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: March 18, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–7029 Filed 3–24–94; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the following Heart, Lung, and Blood Special Emphasis Panels.

These meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: NHLBI SEP on Nutrition Data System for Research and Education (Telephone Conference Call).
Date of Meeting: April 8, 1994.
Time of Meeting: 11 a.m.
Place of Meeting: Westwood Building, room 550, Bethesda, Maryland.
Agenda: To evaluate and review contract proposals.
Contact Person: David M. Monsees, Jr., Ph.D., 5333 Westbard Avenue, room 550, Bethesda, Maryland 20892, (301) 594–7450.

Name of Panel: NHLBI SEP on Investigator Initiated Clinical Trial.
Date of Meeting: April 19, 1994.
Time of Meeting: 1 p.m.
Place of Meeting: Stouffer Concourse Hotel, Arlington, Virginia.
Agenda: To evaluate and review grant applications.
Contact Person: David M. Monsees, Jr., Ph.D., 5333 Westbard Avenue, room 550, Bethesda, Maryland 20892, (301) 594–7450.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: March 18, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–7031 Filed 3–24–94; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health (NIH)

Meeting of Panel/Request for Public Comment

The third meeting of the National Institutes of Health (NIH) Human Embryo Research Panel will be held April 11–12 at the Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland. The meeting will begin each day at 8:30 a.m. and end at 7 p.m. on April 11 and at 12:30 p.m. on April 12. The Panel is a group of special consultants to the Advisory Committee to the Director (ACD), NIH, established to recommend guidelines for Federal funding of research involving the *ex utero* human embryo resulting from *in vitro* fertilization or other sources.

The NIH received a number of applications for support in this area and in the related field of parthenogenesis. However, before proceeding with the consideration of specific human embryo research proposals for funding the NIH must address the profound moral and ethical issues raised by the use of human embryo in research and develop guidelines to govern the review and conduct of Federally-funded research. The Panel's charge is to consider various areas of research involving the *ex utero* human embryo and provide advice as to those areas it views to be acceptable for Federal funding, areas that warrant additional review, and areas that are unacceptable for Federal support. For those areas of research considered acceptable for Federal funding, the Panel will recommend specific guidelines for the review and conduct of this research. Issues related to human germ-line gene modification are not within the Panel's purview. The Panel's final report will be presented to the ACD for review.

During part of its first and second meeting, the Panel reviewed the wide range of scientific and human health benefits that could result from governmental support of research involving the human embryo. At the third meeting, Panel deliberations will focus on the following issues:

The competing ethical frameworks with respect to the moral status of the human embryo. The acceptability of human embryo research from the point of gastrulation (the beginning of the process that culminates in the formation of the primitive streak). Issues raised by research on human embryo that will not be transferred.

Ethically acceptable sources of human embryo or eggs, informed consent requirements, issues raised by compensation of sperm/egg providers, and concerns regarding commercialization.

The need for additional mechanisms for the review, evaluation, and monitoring of human embryo research at local and/or national levels.

The NIH continues to seek public comment on these and other issues raised by Federal funding of human embryo research and encourages interested individuals and organizations to share with the Panel their views and perspectives on these important matters. Those who wish to submit written comments of any length should forward these to Steven Muller, Ph.D., Chair, NIH Human Embryo Research Panel, c/o National Institutes of Health, 9000 Rockville Pike, Building #1, room 216, Bethesda, Maryland 20892. To ensure that public input is available to the Panel during its deliberations, written comments should be received in advance of the Panel's fourth scheduled meeting, May 4, 1994.

As with previous meetings of the Panel, an opportunity is also being provided at the April meeting for interested individuals and organizations to make brief oral presentations to the Panel. To register to make an oral statement before the Panel, individuals and organizations should contact Ms. Peggy Schnoor at the NIH by telephoning 301–496–1454 or by sending a facsimile message to 301–402–0280 or 301–402–1759. Oral statements must not exceed five minutes in length, and a copy of the remarks should be forwarded to the above address one week in advance of the scheduled presentation date. Opportunities to present statements will

be determined by the order in which requests are received.

The NIH will endeavor to provide seating for all members of the public who wish to attend the meetings. Individuals are, however, asked to notify the NIH of their interest in attending by using the telephone or facsimile numbers listed above. Individuals who require special accommodations are also asked to contact Ms. Schnoor at the above number. General questions about the Panel or future meetings should also be directed to Ms. Schnoor.

Dated: March 18, 1994.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 94-7032 Filed 3-24-94; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Grants; Meeting

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, for the review, discussion and evaluation of Small Business Innovation Research Program Applications in the various areas and disciplines related to behavior and neuroscience. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301-594-7265, will furnish summaries of the meeting and roster of panel members.

Meeting To Review Small Business Innovation Research Program Applications

Scientific Review Administrator: Dr. John Mathis (301) 594-7038.
Date of Meeting: April 6, 1994.
Place of Meeting: Bethesda Holiday Inn, Bethesda, MD.
Time of Meeting: 9 a.m.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 18, 1994.

Susan K. Feldman,

Committee Management Office, NIH.

[FR Doc. 94-7030 Filed 3-24-94; 8:45 am]

BILLING CODE 4140-01-M

Office of Community Services

[Program Announcement No. OCS 94-04]

Request for Applications Under the Office of Community Services' Fiscal Year 1994 Training and Technical Assistance Program

AGENCY: Office of Community Services, ACF, DHHS.

ACTION: Request for applications under the Office of Community Services' Training and Technical Assistance Program.

SUMMARY: The Office of Community Services (OCS) announces that competing applications will be accepted for new grants pursuant to the Secretary's discretionary authority under Section 681(a)(3) of the Community Services Block Grant Act of 1981 (Title VI of Public Law 97-35, the Omnibus Budget Reconciliation Act of 1981, 42 U.S.C. 9910(a)(3)). This Program Announcement consists of seven parts. Part A covers information on the legislative authority and defines terms used in the Program Announcement. Part B describes the types of activities that will be considered for funding. Part C provides details on who is eligible to apply and application prerequisites. Part D provides information on application procedures including the availability of forms, where to submit an application, criteria for initial screening of applications, and project evaluation criteria. Part E provides guidance on the content of an application package and the application itself. Part F provides instructions for completing an application. Part G details post-award requirements.

CLOSING DATE: The closing date for submission of applications is May 24, 1994.

FOR FURTHER INFORMATION CONTACT: Mae Brooks, Division of Block Grants, Office of Community Services, Administration for Children and Families, 370 L'Enfant Promenade SW., Washington, DC 20447. You may also call (202) 401-9343.

Part A—Preamble

1. Legislative Authority

Section 681(a)(3) of the Community Services Block Grant (CSBG) Act authorizes the Secretary of Health and Human Services to make funds available to States and public and private nonprofit organizations to provide for training and technical assistance to aid States in carrying out their responsibilities under the CSBG Act.

2. Definitions of Terms

For purposes of this Program Announcement the following definitions apply:

"Training" is an educational activity or event which is designed to impart knowledge, understanding, or increase the development of skills. Such training activities may be in the form of assembled events such as workshops, seminars, or programs of self-instructional activities.

"Technical assistance" is a problem-solving event generally utilizing the services of an expert. Such services may be provided on-site, by telephone, or other communications. These services address specific problems and are intended to assist with the immediate resolution of a given problem or set of problems.

"State" means all of the States and the District of Columbia. Except where specifically noted, for purposes of this Program Announcement it also means "Territory."

"Territory" refers to the Commonwealth of Puerto Rico, the American Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau.

"Local service providers" are the approximately 1,000 local public or private nonprofit agencies that receive Community Services Block Grant funds from States to provide services to, or undertake activities on behalf of, low-income people.

"Nationwide" refers to the scope of the technical assistance training on data collection projects to be undertaken with grant funds. Proposed projects must provide for the implementation of technical assistance, training or data collection for a significant number of States, and the local service providers who administer CSBG funds.

Part B—Purpose

Section 681(a)(3) of the CSBG Act authorizes the Secretary of the Department of Health and Human Services to make grants to States and public agencies and private nonprofit organizations, or to enter into contracts or jointly financed cooperative arrangements with States and public agencies and private nonprofit organizations, to provide for training and technical assistance to aid States in carrying out their responsibilities for

conducting and administering the CSBG Program.

OCS is soliciting applications which implement these legislative mandates *on a national basis* and in a *comprehensive manner.* OCS believes that training and technical assistance needs are best identified at the State and local levels, not at the Federal level. Therefore, funds will be provided in the form of grants. Proposed projects under this Program Announcement must focus on one of the following program priorities:

Priority 1—Training and Technical Assistance: The development and implementation of a comprehensive, nationwide training and/or technical assistance program to assist State staff and/or staff of local service providers which receive funding under the CSBG Act, to acquire the skills and knowledge needed to administer and implement programs designed to ameliorate the causes of poverty in the communities. Programs must include the provision of training and/or technical assistance to State staff and/or staff of local service providers nationwide, i.e., in each of the Federal Regions, in the most cost effective manner possible. Collaboration with State CSBG coordinators and local service providers will be required in identifying the training and technical assistance needs of staff of local service providers.

Priority 2—Data Collection: The design of a survey instrument, and the collection, analysis, and dissemination of information on FY 1993 CSBG Programs on a nationwide basis through a process that relies on voluntary State cooperation. The information must be comprehensive enough and disseminated in such formats as to enable States and local service providers to improve their planning, management, and delivery of services and to assure that the general public has a clear understanding of those programs and their outcomes.

Submissions which propose the use of grant funds for the development of any printed or visual materials must contain convincing evidence that these materials are not available from other sources. OCS will not provide funding for such items if justification is not sufficient. Approval of the development of films or visual presentations proposed by applicants approved for funding will made part of the grant ward.

See Part F, Section 4, for special instructions on developing a work program.

Part C—Application Prerequisites

1. Eligible Applicants

Eligible applicants for Priority 1 are States, public agencies and private non-profit organizations that can demonstrate familiarity and expertise nationwide with the training and/or technical assistance needs of community action agencies or State CSBG administering agencies; and, for Priority 2, States, public agencies and private non-profit organizations that can demonstrate their familiarity with the CSBG Program and their ability to collect data from States on a voluntary basis. In order to be considered for funding, proof of non-profit status must be submitted with the application. Any of the following is acceptable evidence: (1) Copy of the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS Code; or (2) a copy of the current valid IRS tax exemption certificate.

2. Available Funds

The amount of funds available for grant awards under this announcement in FY 94 is $271,439; $171,439 are available for training and technical assistance activities and $100,000 for data collection activities. It is anticipated that two grants will be made for T&TA activities and one grant will be made for data collection activities.

3. Grant Duration

OCS will grant funds for a maximum of 12-month project and budget periods. The application must clearly demonstrate that the project work plan will achieve measurable results and can be successfully completed within the stated time period.

4. Project Beneficiaries

Projects proposed for funding under the training and technical assistance priority area must result in direct benefits to staffs of State or local service providers in carrying out their responsibilities under the Community Services Block Grant Act.

5. Sub-Contracting or Delegating Projects

OCS will not fund any project where the role of the applicant is primarily to serve as a conduit for funds to organizations other than the applicant. This prohibition does not bar the making of subgrants or subcontracting for specific services or activities needed to conduct the project. However, the applicant must have a substantive role in the implementation of the project for which funding is requested.

Part D—Application Procedures

1. Availability of Forms

Attachments A, B and C contain all of the standard forms necessary for the application for awards under these OCS programs. These forms may be photocopied for use in developing the application.

Copies of the **Federal Register** containing this announcement are available at most local libraries and Congressional District Offices for reproduction. If copies are not available at these sources, they may be obtained by writing or telephoning the office listed under the section entitled **FOR FURTHER INFORMATION** at the beginning of this announcement.

For purposes of this announcement, all applicants will use SF–424, SF–424A, and SF–424B. Instructions for completing the SF 424, SF–424A, and SF–424B are found in Attachments A, B, and C and Part F.

Part F contains instructions for the project narrative. The project narrative will be submitted on plain bond paper along with the SF–424 and related forms.

Attachment I provides a checklist to aid applicants in preparing a complete application package for OCS.

2. Application Submission

Refer to the section entitled "Closing Date" at the beginning of this Program Announcement for the last day on which applications should be submitted. Applications may be mailed to: Administration for Children and Families, Division of Discretionary Grants, 6th Floor OFM/DDG, OCS–94–04, 370 L'Enfant Promenade SW., Washington, DC 20447.

Hand-delivered applications are accepted during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, OCS–94–04, Sixth Floor, 901 D Street SW., Washington, DC 20447.

An application shall be considered as meeting the announced deadline if it is either:

1. Received on or before the deadline date at a place specified in the Program Announcement, or

2. Sent on or before the deadline date and received by the granting agency in time for them to be considered during the competitive review and evaluation process. (Applicants are cautioned to request a legibly dated U.S. Postal

Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.)

Applications which do not meet one of these criteria are considered late applications. The ACF Division of Discretionary Grants will notify each late applicant that its application will not be considered in this competition.

The ACF may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc. or when there is a disruption of the mails. However, if the ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

Applications once submitted are considered final and no additional materials will be accepted.

One signed original application and two copies should be submitted.

3. Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs" and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, Virginia, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these seventeen jurisdictions need take no action regarding E.O. 12372.

Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions, so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424A, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new awards. These comments are reviewed as a part of the award process. Failure to notify the SPOC can result in a delay in grant award.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule under 45 CFR 100.10.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, OCS–94–04, 6th Floor, 370 L'Enfant Promenade SW., Washington, DC 20447. A list of the Single Points of Contact for each State and Territory is included as Appendix G of this announcement.

4. Application Consideration

Applications which meet the screening requirements in Sections 5a and 5b below will be reviewed competitively. Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to program guidelines and evaluation criteria published in this announcement.

Applications will be reviewed by persons outside of the OCS unit which would be directly responsible for programmatic management of the grant. The results of these reviews will assist OCS in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications will be ranked and generally considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since the other factors deemed relevant may be considered including, but not limited to, the timely and proper completion of projects funded with OCS funds granted in the past 5 years; comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on OCS or other Federal agency grants.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

5. Criteria for Screening Applications

a. *Initial screening.* All applicants will receive an acknowledgement with an assigned identification number. This number, along with any other identifying codes, must be referenced in all subsequent communications concerning the application. If an acknowledgement is not received within three weeks after the deadline date, please notify ACF by telephone at (202) 401–9230. All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this announcement. Only those applications meeting the following requirements will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable.

(1) The application must contain a Standard Form 424 "Application for Federal Assistance" (SF–424), a budget (SF–424A), and signed "Assurances" (SF–424B) completed according to instructions published in Part F and Attachments A, B, and C of this program announcement.

(2) A project narrative must also accompany the standard forms.

(3) The SF–424 and the SF–424B must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally.

b. *Pre-rating review.* Applications which pass the initial screening will be forwarded to reviewers and/or OCS staff to verify, prior to the programmatic review, that the applications comply with this Program Announcement in the following areas:

(1) *Eligibility:* Applicant meets the eligibility requirements found in Part C. Applicant also must be aware that the applicant's legal name as required on the SF 424 (Item 5) *must match* that listed as corresponding to the Employer Identification Number (Item 6).

(2) *Duration of Project:* The application contains a project that can be successfully implemented in 12 months.

(3) *Target Populations:* The application clearly targets the specific outcomes and benefits of the project to State staff recipients of CSBG funds and/or local providers of CSBG-funded services and activities.

(4) *Program Focus:* The application must address development and implementation of a nationwide, comprehensive training and/or technical assistance or data collection activities as described in Part B of this announcement.

An application may be disqualified from the competition and returned to the applicant if it does not conform to one or more of the above requirements.

c. *Evaluation criteria.* Applications which pass the pre-rating review will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and major weaknesses under each applicable criterion published in this announcement. The in-depth evaluation and review process will use the following criteria coupled with the specific requirements contained in Part B. (Note: The following review criteria reiterate collection of information requirements contained in Part F of this announcement. These requirements are approved under OMB Control Number 0970–0062.)

Criteria for Review and Evaluation of Applications Submitted Under This Program Announcement

(1) *Criterion I: Need for Assistance* (Maximum: 20 points)

(a) The application documents that the project addresses a vital nationwide need related to the purposes of this Program Announcement (Part B) and provides statistics and other data and information in support of its contention (0–10 points).

(b) Provides current supporting documentation or other testimonies from *State* CSBG Directors and *local* service providers or *State* and Regional organizations of *local* service providers (0–10 points).

(2) *Criterion II: Work Program* (Maximum: 30 points).

(a) Goals are appropriately related to needs and are specific and measurable (0–10 points).

(b) Activities are comprehensive and nationwide in scope, and adequately described and appropriately related to goals (0–10 points).

(c) Time frames and chronology of key activities are realistic (0–2 points).

(d) The plan for conducting an assessment that will determine the degree to which the stated goals and objectives of the project are achieved is adequate and workable and, where appropriate, the plan for disseminating the information resulting from the project to CSBG grantees, local service providers, and other interested parties is workable and assures that all relevant parties are included in the dissemination (0–8 points).

(3) *Criterion III: Significant and Beneficial Impact* (Maximum 25 points)

(a) Applicant adequately describes how the project will assure long-term program and management improvements for States and/or local providers of CSBG services and activities (0–15 points).

(b) *For T&TA applications:* The project will impact on a significant number of State staff or local service providers (0–10 points).

(c) *For data collection applications:* The applicant has the ability to collect data from a significant number of States (0–10 points).

(4) *Criterion IV: Ability of Applicant to Perform* (Maximum: 20 points)

(a) The application demonstrates that the applicant has experience relevant to the activities that it proposes to undertake (0–10 points).

(b) The applicant's proposed project director and primary staff are well qualified and their professional experiences are relevant to the successful implementation of the proposed project (0–10 points).

(5) *Criterion V: Adequacy of Budget* (Maximum: 5 points).

(a) The resources requested are reasonable and adequate to accomplish the project (0–3 points).

(b) Total costs are reasonable and consistent with anticipated results (0–2 points).

Part E—Contents of Application and Receipt Process

1. Contents of Application

Each application should include one original and two additional copies of the following:

a. A completed Standard Form 424 which has been signed by an official of the organization applying for the grant who has authority to obligate the organization legally. The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in Attachments D and E.

b. "Budget Information-Non-Construction Programs" (SF–424A).

c. A filled out, signed and dated "Assurances—Non-Construction Programs" (SF–424B), Attachment C.

d. Restrictions on Lobbying—Certification for Contracts, Grants, Loans, and Cooperative Agreements: fill out, sign and date form found at Attachment F.

e. Disclosure of Lobbying Activities, SF-LLL: fill out, sign and date form found at Attachment F, as appropriate.

f. A Project Narrative consisting of the following elements preceded by a consecutively numbered Table of Contents that will describe the project in the following order:

(i) Need for Assistance

(ii) Work Program

(iii) Significant and Beneficial Impact

(iv) Management History

(v) Staffing and Resources

(vi) Appendices including proof of non-profit status, such as IRS determination of non-profit status; By-Laws; Articles of Incorporation; Certification Regarding Lobbying; resumes, etc. The original must bear the signature of the authorizing official representing the applicant organization. The total number of pages for the entire application package should not exceed 30 pages, including appendices. Pages should be numbered sequentially throughout. If appendices include photocopied materials, they must be legible. Applications should be two-hole punched at the top center and fastened separately with a compressor slide paper fastener or a binder clip. The submission of bound applications or applications enclosed in a binder is specifically discouraged.

Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on white 8½ x 11 inch paper only. They must not include colored, oversized or folded materials. Do not include organizational brochures or other promotional materials, slides, films, clips, etc. in the proposal. They will be discarded if included.

Part F—Instructions for Completing Application Package

(Approved by the OMB Under Control Number 0970–0062)

The standard forms attached to this Announcement shall be used when submitting applications for all funds under this Announcement.

It is recommended that the applicant reproduce the SF–424 (Attachment A), SF–424A (Attachment B), SF–424B (Attachment C) and that the application be typed on the copies. If an item on the SF–424 cannot be answered or does not appear to be related or relevant to the assistance requested, the applicant should write "NA" for "Not Applicable."

The application should be prepared in accordance with the standard instructions in Attachments A and B corresponding to the forms, as well as the specific instructions set forth below:

1. SF–424 "Application for Federal Assistance" Item

1. For the purposes of this announcement, all projects are considered "Applications"; there are no "Pre-Applications."

5 and 6. The legal name of the applicant must match that listed as

corresponding to the Employer Identification Number. Where the applicant is a previous Department of Health and Human Services grantee, enter the Central Registry System Employee Identification Number (CRS/EIN) and the Payment Identifying Number, if one has been assigned, in the Block entitled "Federal Identifier" located at the top right hand corner of the form.

7. If the applicant is a non-profit corporation, enter "N" in the box and specify "non-profit corporation" in the space marked "Other." Proof of non-profit status such as IRS determination, Articles of Incorporation, or by-laws, must be included as an appendix to the project narrative.

8. For the purposes of this announcement, all applications are "New".

9. Enter "DHHS–ACF/OCS".

10. The Catalog of Federal Domestic Assistance number for the OCS program covered under this announcement is "93.032".

11. In addition to a brief descriptive title of the project, the following letter designations must be used: "TA"—for training and technical assistance projects; "TD"—for data collection activities.

The title is "Community Services Block Grant Discretionary Awards—Training and Technical Assistance Program."

15a. For purposes of this Announcement, this amount should reflect the amount requested for the entire project period. 15b-e. These items should reflect both cash and third party in-kind contributions for the total project period.

2. SF–424A—"Budget Information-Non-Construction Programs"

See Instructions accompanying this page as well as the instructions set forth below:

In completing these sections, the "Federal Funds" budget entries will relate to the requested OCS Training and Technical Assistance Program funds only, and "Non-Federal" will include mobilized funds from all other sources—applicants, State, and other. Federal funds other than those requested from the Training and Technical Assistance Program should be included in "Non-Federal" entries.

Sections A and D of SF–424A must contain entries for both Federal (OCS) and non-Federal (mobilized funds).

Section A—Budget Summary

Line 1–4
Col. (a):
Line 1 Enter "OCS Training and Technical Assistance Program";
Col. (b):
Line 1 Enter "93.032".
Col. (c) and (d): Not Applicable
Col. (e)—(g):

For each line 1–4, enter in columns (e), (f) and (g) the appropriate amounts needed to support the project for the entire project period.

Line 5 Enter the figures from Line 1 for all columns completed, (e), (f), and (g).

Section B—Budget Categories

This section should contain entries for OCS funds only. For all projects, the first budget period of 12 months will be entered in Column #1. Allowability of costs is governed by applicable cost principles set forth in 45 CFR Parts 74 and 92.

A separate itemized budget justification should be included to explain fully and justify major items, as indicated below. The budget justification should immediately follow the Table of Contents.

Column 5: Enter total requirements for Federal funds by the Object Class Categories of this section.

Line 6a—Personnel: Enter the total costs of salaries and wages.

Justification

Identify the project director. Specify by title or name the percentage of time allocated to the project, the individual annual salaries and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Line 6b—Fringe Benefits: Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate which is entered on line 6j.

Justification

Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate.

Line 6c—Travel: Enter total cost of all travel by employees of the project. Do not enter costs for consultant's travel.

Justification

Include the name(s) of traveler(s), total number of trips, destinations, length of stay, mileage rate, transportation costs and subsistence allowances.

Line 6d—Equipment: Enter the total costs of all non-expendable personal property to be acquired by the project. Equipment means tangible non-expendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

Justification

Equipment to be purchased with Federal funds must be required to conduct the project, and the applicant organization or its subgrantees must not already have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Line 6e—Supplies: Enter the total costs of all tangible personal property (surplus) other than that included on line 6d.

Line 6h—Other: Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, printing and publication, computer use training costs including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Line 6j—Indirect Charges: Enter the total amount of indirect costs. This line should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or other Federal agencies. With the exception of States and local governments, applicants should enclose a copy of the current approved rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services. For an educational institution the indirect costs on training grants will be allowed at the lesser of the institution's actual indirect costs or 8 percent of the total direct costs.

If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent DHHS Guide for Establishing Indirect Cost Rates, and submit it to the appropriate DHHS Regional Office. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool cannot be also budgeted or charged as direct costs to the grant.

The total amount shown in Section B, Column (5), Line 6k, should be the same as the amount shown in Section A, Line 5, Column (e).

Line 7—Program Income: Enter the estimated amount of income, if any,

expected to be generated from this project. Separately show expected program income generated from OCS support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement. Column 5: Carry totals from Column 1 to Column 5 for all line items.

Justification

Describe the nature, source and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources

This section is to record the amounts of "Non-Federal" resources that will be used to support the project. "Non-Federal" resources mean other than OCS funds for which the applicant has received a commitment. Provide a brief explanation, on a separate sheet, showing the type of contribution, broken out by Object Class Category, (See Section B.6) and whether it is cash or third-party in-kind. The firm commitment of these required funds must be documented and submitted with the application.

Except in unusual situations, this documentation must be in the form of letters of commitment or letters of intent from the organization(s)/individuals from which funds will be received.

Line 8—
Col. (a): Enter the project title.
Col. (b): Enter the amount of cash or donations to be made by the applicant.
Col. (c): Enter the State contribution.
Col. (d): Enter the amount of cash and third party in-kind contributions to be made from all other sources.
Col. (e): Enter the total of columns (b), (c), and (d). Lines 9, 10, and 11 should be left blank.
Line 12—Carry the total of each column of Line 8, (b) through (e). The amount in Column (e) should be equal to the amount on Section A, Line 5, Column (f).

Justification

Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs

Line 13—Enter the amount of Federal (OCS) cash needed for this grant, by quarter, during the first 12 month budget period.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the total of Lines 13 and 14.

Section F—Other Budget Information

Line 21—Include narrative justification required under Section B for each object class category for the total project period.

Line 22—Enter the type of HHS or other Federal agency approved indirect cost rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved, where applicable. Attach a copy of the approved rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services.

Line 23—Provide any other explanations and continuation sheets required or deemed necessary to justify or explain the budget information.

3. SF–424B "Assurances Non-Construction"

All applicants must sign and return the "Assurances" found at Attachment C with their application.

4. Project Narrative

Each narrative section of the application must address one or more of the focus areas described in Part B and follow the format outlined below.

a. Need for Assistance
b. Work Program
c. Significant and Beneficial Impact
d. Ability of the Applicants to Perform
e. Staffing and Resources

a. *Need for assistance.* The application should identify the problem areas in which State organizations receiving CSBG funds and/or local service providers which receive CSBG funds as subgrantees from States are seeking assistance and how those needs were identified. Applicants also should provide current supporting documentation or other testimonies from *State* CSBG Directors and *local* service providers or State and Regional organizations of local service providers, as appropriate, regarding need for the proposed project.

b. *Work program.* The application must contain a detailed and specific work program that is both sound and feasible. Applicants must address how the proposed project will carry out the legislative mandate and the program activities found in Part B. This section of the narrative must include the goals of the project related to the needs, the activities that they propose to carry out to address those goals, the methods by which they will carry out those activities, and the plan for disseminating products resulting from the project, where appropriate. Project activities must be described in a quantitative manner, e.g. number of training days, number of workshops, number of persons to be trained, number of local services providers to be impacted, materials to be developed, etc. The applicant must define the comprehensive nature of the proposed project and the methods which will be used to ensure that it is a nationwide project.

For data collection projects, applicants should, at a minimum, describe the methodology to be used to identify the kind of data to be collected, how the data will be collected, how the applicant will assure that the appropriate data will be collected, a plan for data analysis, the methods by which the data will be disseminated and the audiences, and a plan for conducting an assessment of the usefulness of data collected.

The application must (1) set forth realistic quarterly time targets by which the various work tasks will be completed; (2) include a plan for conducting an assessment of its activities as they relate to the goals and objectives; and (3) include a description of how the applicant will involve other appropriate organizations in the planning or implementation of the project in order to avoid duplication of effort and to leverage additional resources.

c. *Significant and beneficial impact.* Each applicant must indicate how the project will have a significant and beneficial impact. At a minimum the applicant must provide (1) A description of how the project will result in long-term improvements for the State organization receiving CSBG funds and/or local providers who receive CSBG as a subgrantee of the State and (2) the types and amounts of public and/or private resources it will mobilize and how those resources will directly benefit the project. An applicant proposing a project with a training and technical assistance focus also must indicate the number of local service providers and/or staff it will impact. An applicant proposing a project with a data collection focus also must provide a description of the mechanism the applicant will use to collect data, how it can assure collections from a significant number of states, and how many states will be willing to submit data to the applicant.

d. *Ability of applicants to perform.* Organizations must detail their competence in the specific program area. Documentation must be provided which addresses (1) accomplishments

relevant to the proposed project, and (2) experience relevant to the CSBG program.

Organizations which propose providing training and technical assistance must detail their competence in the specific program priority area and as a deliverer with expertise in the fields of training and technical assistance on a nationwide basis. If applicable, information provided by these applicants must also address related achievements and competence of each cooperating or sponsoring organization.

e. *Staffing and resources.* The application must fully describe (e.g. a resume) the experience and skills of the proposed project director and primary staff showing that the individuals are not only well qualified but that their professional capabilities are relevant to the successful implementation of the proposed project.

Part G—Post Award Information and Reporting Requirements

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Notice of Grant Award which provides the amount of Federal funds approved for use in the project, the project and budget periods for which support is provided, the terms and conditions of the award, and the total project period for which support is contemplated.

In addition to the standard terms and conditions which will be applicable to grants, grantee will be subject to the provisions of 45 CFR parts 74 (non-governmental) and 92 (governmental) and OMB Circulars A–128 and A–133.

Grantees will be required to submit quarterly progress and financial reports (SF–269) as well as a final progress and financial report.

Grantees are subject to the audit requirements in 45 CFR parts 74 (non-governmental) and 92 (governmental) and OMB Circulars A–128 and A–133.

Section 1352 of Public Law 101–121, signed into law on October 23, 1989, imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their subtier contractors and/or grantees) are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement, or loan. In addition, for each award action in excess of $100,000 (or $150,000 for loans) the law requires recipients and their subtier contractors and/or subgrantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to disclose the name, address, payment details, and purpose of any agreements with lobbyists whom recipients or their subtier contractors or subgrantee will pay with profits or *nonappropriated* funds on or after December 22, 1989, and (3) to file quarterly up-dates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for noncompliance. See Attachment F for certification and disclosure forms to be submitted with the applications for this program.

Attachment H indicates the regulations which apply to all applicants/grantees under this program.

Dated: March 17, 1994.

Donald Sykes,

Director, Office of Community Services.

BILLING CODE 4184–01–P

Attachment A

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐☐ ☐☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4184-01-C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry:

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to his application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184-01-P

Attachment B

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

BILLING CODE 4184-01-C

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

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Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary, Lines 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budget amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and inkind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Line 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Attachment C—Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a–7), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of authorized certifying official

Title

Applicant organization

Date submitted

BILLING CODE 4184–01–P

Attachment D

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4184-01-C

Attachment E—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction," provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Attachment F—Certification Regarding Anti-Lobbying Provisions

Certification for Contracts, Grants Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

alt. cost _____

Signature
alt. cost _____

Title
alt. cost _____

Organization
alt. cost _____

Date _____

BILLING CODE 4184-01-P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by O
0346-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):

(*attach Continuation Sheet(s) SF-LLL-A, if necessary*)

11. Amount of Payment (*check all that apply*):	13. Type of Payment (*check all that apply*):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(*attach Continuation Sheet(s) SF-LLL-A, if necessary*)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

BILLING CODE 4184-01-C

Attachment G—Executive Order 12372—State Single Points of Contact

Arizona

Mrs. Janice Dunn, Attn: Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315

Arkansas

Tracie L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 682–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866–2156

Delaware

Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, NW., Suite 500, Washington, DC 20005, Telephone (202) 727–6551

Florida

Florida State Clearing House, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8441

Georgia

Mr. Charles H. Badger, Administrator, Georgia State Clearing House, 254 Washington Street, SW., Atlanta, Georgia 30334, Telephone (404) 656–3855

Illinois

Steve Klokkenga, Single Point of Contact, Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, Telephone (217) 782–1671

Indiana

Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine

Ms. Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Ms. Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

Massachusetts

Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

Michigan

Richard S. Pastula, Director, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373–7356

Mississippi

Ms. Cathy Mallette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone (601) 960–2174

Missouri

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687–4065, Attention: Ron Sparks, Clearinghouse Coordinator

New Hampshire

Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review, Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

New Jersey

Gregory W. Adkins, Acting Director, Division of Community Resources, N.J. Department of Community Affairs, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613, Please direct correspondence and questions to: Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, room 609, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025

New Mexico

George Elliott, Deputy Director, State Budget Division, room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, FAX (505) 827–3006

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, Office of the Secretary of Admin., N.C. State Clearinghouse, 116 W. Jones Street, Raleigh, North Carolina 27603–8003, Telephone (919) 733–7232

North Dakota

N.D. Single Point of Contact, Office of Intergovernmental Assistance, Office of Management and Budget, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone (701) 224–2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

Rhode Island

Mr. Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656, Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

South Carolina

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the

Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0494

South Dakota

Ms. Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773–3212

Tennessee

Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

Texas

Mr. Thomas Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, Attn: Carolyn Wright, Room 116, State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535

Vermont

Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

Wisconsin

Mr. William C. Carey, Federal/State Relations, Wisconsin Department of Administration, 101 South Webster Street, P.O. Box 7864, Madison, Wisconsin 53707, Telephone (608) 266–0267

Wyoming

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

Guam

Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Norma Burgos/Jose H. Caro, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802, Please direct correspondence to: Linda Clarke, Telephone (809) 774–0750

Attachment H

Checklist for Use in Submitting OCS Grant Applications (Optional)

The application should contain:

1. A completed, *signed* SF–424, "Application for Federal Assistance". The letter code for the priority areas (TA) or (TD) should be in the lower right-hand corner of the page;
2. A completed "Budget Information-Non-Construction" (SF–424A);
3. A *signed* "Assurances-Non-Construction" (SF–424A);
4. A Project Narrative beginning with a Table of Contents that describes the project in the following order:
   (a) Need for Assistance
   (b) Work Program
   (c) Significant and Beneficial Impact
   (d) Ability of Applicant to Perform
   (e) Staffing and Resources
5. Appendices including proof of non-profit status, Single Points of Contact comments (where applicable), resumes;
6. A *signed* copy of "Certification Regarding Anti-Lobbying Activities";
7. A completed "Disclosures of Lobbying Activities", if appropriate; and
8. A self-addressed mailing label which can be affixed to a postcard to acknowledge receipt of application.

The application should not exceed a total of 30 pages. It should include one original and four identical copies, printed on white 8½ by 11 inch paper, two holes punched at the top center and fastened separately with a compressor slide paper fastener or a binder clip.

The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in Attachments D and E.

Attachment I

The following DHHS regulations apply to all applicants/grantees under the Training and Technical Assistance Program:

Title 45 of the Code of Federal Regulations:

Part 16—Procedures of the Departmental Grant Appeals Board
Part 74—Administration of Grants (non-governmental)
Part 74—Administration of Grants (state and local governments and Indian Tribal affiliates):
  Sections 74.62(a) Non-Federal Audits
  Sections 74.173 Hospitals
  Sections 74.174(b) Other Nonprofit Organizations
  Sections 74.304 Final Decisions in Disputes
  Sections 74.710 Real Property, Equipment and Supplies
  Sections 74.715 General Program Income
Part 75—Informal Grant Appeal Procedures
Part 76—Debarment and Suspension form Eligibility for Financial Assistance

Subpart F—Drug Free Workplace Requirements

Part 80—Non-discrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964
Part 81—Practice and Procedures for Hearings Under Part 80 of this Title
Part 84—Non-discrimination on the Basis of Handicap in Programs
Part 86—Nondiscrimination on the basis of sex in the admission of individuals to training programs
Part 91—Non-discrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance
Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (Federal Register, March 11, 1988)
Part 93—New Restrictions on Lobbying
Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities

[FR Doc. 94–7140 Filed 3–24–94; 8:45 am]
BILLING CODE 4184–01–P

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget

(OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, March 11, 1994.

(Call PHS Reports Clearance Officer on 202–690–7100 for copies of request).

1. Employee vital Status Letter—0920–0035 (Revision)—The Vital Status letter is sent to members of retrospective studies to determine if an employee who was exposed to a toxic substance in the workplace that is suspected of causing long-term adverse health effects is deceased or alive. This letter is used as a last resort, after all other methods have been exhausted. Respondents: Individuals or households; Number of Respondents: 252; Number of Responses per Respondent: 1; Average Burden per Response: .17 hour; Estimated Annual Burden: 42 hours.

2. National Ambulatory Medical Care Survey—0920–0234 (Revision)—Data collected from office-based physicians concerning patient visits are aggregated to national statistics. The data are used by the public and private sectors for public health planning, medical education, health manpower assessment, epidemiologic studies, and other medical care utilization research. Respondents: Businesses or other for-profit, Small businesses or organizations: Number of Respondents: 3,613; Number of Responses per Respondent: 31; Average Burden per Response: .0403 hour; Estimated Annual Burden: 4,516 hours.

3. Application for Appointment as a Commissioned Officer in the U.S. Public Health Service—0937–0208 (Extension, no change)—This application is used by individuals to apply for appointment in the Commission Corps of the Public Health Service and to obtain references which are part of the application process. Information obtained is used by PHS officials to evaluate candidates for employment. Respondents: Individuals or households.

Title	No. of respondents	No. of responses per respondent	Average burden per response
Application	4,225	1	1 hour.
Reference Form	17,000	1	.25 hour.

Estimate Total Annual Burden: 8,450.

4. Human Tissue Intended for Transportation 21 CFR 1270 (Interim Rule)—New—The Food and Drug Administration issued an interim rule requiring certain infectious disease testing, donor screening, and recordkeeping to help prevent the transmission of AIDS and hepatitis through human tissue used in transplantation. Respondents: Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.

Title	No. of respondents	No. of responses per respondent	Average burden per response
1270.7(b) Recordkeeping	400	1	10 hours.
1270.9(a) & .11(a) Recordkeeping	200	1	2.083 hours.
1270.11(b) Recordkeeping	400	1	.5 hours.

Estimate Total Annual Burden: 4,616 hours.

5. Cardiac Pacemaker Registry—0910–0234 (Reinstatement)—This data collection will collect information from physicians and providers who perform Medicare-covered pacemaker procedures. The information is for the Congressionally mandated Pacemaker Registry. Respondents: Businesses or other-for-profit; Non-profit institutions; Small businesses or organizations: Number of Respondents: 1; Number of Responses per Respondent: 1; Average Burden per Response: 1 hour; Estimated Annual Burden: 1 hour.

6. 1993 National Mortality Followback Survey—0920–0311 (Reinstatement)—Effective programs to prevent death and to finance and provide care for the seriously ill require knowledge about characteristics and behaviors of decedents in the U.S. The survey will secure such information for a national sample of decedents dying in 1993 from next-of-kin informants and medical examiners/coroners. Respondent: Individuals or households, State or local governments.

Title	No. of respondents	No. of responses per respondent	Average burden per response
Next-of-Kin	7,820	1	.917 hour.
Medical Examiners/Coroners	289	8	.33 hour.
Funeral Homes	592	1	.083 hour.

Estimate Total Annual Burden: 8,020 hours.

7. Study of the Consequences of Whistleblowing—New—42 CFR part 50 and section 493(b) of the Public Health Service Act (42 U.S.C. 289(b)) together define efforts to protect the position and reputation of those persons who in good faith make allegations of research misconduct. This survey of persons whose cases have been closed will

provide background information to assure adequate protections in new regulations. Respondents: Individuals or households; Number of Respondents: 100; Number of Responses per Respondent: 1; Average Burden per Response: .53 hours; Estimated Annual Burden: 53 hours.

Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address: Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: March 22, 1994.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 94-7092 Filed 3-24-94; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the Federal Register on Friday, March 4, 1994. (Call Reports Clearance Officer on (410) 965-4142 for copies of package.)

1. Study on the Use of the SSA-4122 (Your SSI Folder)—960-NEW. The information on form SSA-103 will be used by the Social Security Administration to determine how effective the SSA-4122 is in reducing field office and quality review development, and whether it improves the recipient's reporting of changes.

Number of Respondents: 1,000.

Frequency of Response: One time only.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 250 hours.

2. SSA/DDS Cost-effectiveness Measurement System Data Reporting Form—0960-0384. Form SSA-1461 is used by the Social Security Administration (SSA) to obtain cost information from 52 State agencies which make disability determinations for SSA. The information on this form is used to assist SSA in making DDS funding allocations, setting cost effectiveness goals and measuring the cost effectiveness of those agencies. The respondents are those 52 State agencies.

Number of Respondents: 52.

Frequency of Response: Quarterly.

Average Burden Per Response: 5.2 hours.

Estimated Annual Burden: 1,082 hours.

3. Psychiatric Review Technique—0960-0413. The information on form SSA-2506 is used by the Social Security Administration (SSA) to evaluate the severity of mental impairments in adults who have filed for disability benefits. The affected public consists of State Disability Determination Services agencies who make these evaluations and report their findings to SSA.

Number of Respondents: 54 State agencies.

Frequency of Response: 11,023 per State agency.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 148,809 hours.

4. You Can Make Your Payment by Credit Card—0960-0462. The information on forms SSA-4588 and SSA-4589 is used by the Social Security Administration (SSA) to record payments received via credit cards from individuals who have been overpaid by SSA. The respondents are overpaid individuals who wish to repay SSA by using their credit cards.

Number of Respondents: 12,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 1,000 hours.

OMB Desk Officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: March 21, 1994.

Charlotte Whitenight,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 94-6948 Filed 3-24-94; 8:45 am]

BILLING CODE 4190-29-P

Finding Regarding Foreign Social Insurance or Pension System—Uruguay

AGENCY: Social Security Administration, HHS.

ACTION: Notice of finding regarding Foreign Social Insurance or Pension System—Uruguay.

FINDING: Section 202(t)(1) of the Social Security Act (42 U.S.C. 402(t)(1)) prohibits payment of monthly benefits to any individual who is not a United States citizen or national for any month after he or she has been outside the United States for 6 consecutive months. This prohibition does not apply to such an individual where one of the exceptions described in section 202(t)(2) through 202(t)(5) of the Social Security Act (42 U.S.C. 402(t)(2) through 402(t)(5)) affects his or her case.

Section 202(t)(2) of the Social Security Act provides that, subject to certain residency requirements of section 202(t)(11), the prohibition against payment shall not apply to any individual who is a citizen of a country which the Secretary of Health and Human Services finds has in effect a social insurance or pension system which is of general application in such country and which:

(A) Pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(B) Permits individuals who are United States citizens but not citizens of that country and who qualify for such benefits to receive those benefits, or the actuarial equivalent thereof, while outside the foreign country regardless of the duration of the absence.

The Secretary of Health and Human Services has delegated the authority to make such a finding to the Commissioner of Social Security. The Commissioner has redelegated that authority to the Director of the Office of International Policy. Under that authority the Director of the Office of International Policy has approved a finding that Uruguay, beginning July 2, 1993, has a social insurance system of general application which:

(A) Pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(B) Permits United States citizens who are not citizens of Uruguay to receive such benefits, or their actuarial equivalent, at the full rate without qualification or restriction while outside Uruguay.

Accordingly, it is hereby determined and found that Uruguay has in effect, beginning July 2, 1993, a social insurance system which meets the

requirements of section 202(t)(2) of the Social Security Act (42 U.S.C. 402(t)(2)).

This revises our previous finding, published at 33 FR 15679 on October 23, 1968, that Uruguay has in effect a social insurance system which is of general application in that country and which meets the requirements of section 202 (t)(2)(A) of the Social Security Act (42 U.S.C. 402(t)(2)(A)), but not the requirements of section 202(t)(2)(B) of the Act (42 U.S.C. 402(t)(2)(B)).

FOR FURTHER INFORMATION CONTACT: Donna Powers, room 1104, West High Rise Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3568.

(Catalog of Federal Domestic Assistance: Program Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security—Survivors Insurance)

Dated: December 10, 1993.

James A. Kissko,

Director, Office of International Policy.

[FR Doc. 94–7097 Filed 3–24–94; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–1917; FR–3350–N–76]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Barbara Richards, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free) or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with sections 2905 and 2906 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160 (Pryor Act Amendment) and with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This notice is also published in order to comply with the April 21, 1993 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

These properties reviewed are listed as suitable/available and unsuitable. In accordance with the Pryor Act Amendment the suitable properties will be made available for use to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this notice. Please be advised, in accordance with the provisions of the Pryor Act Amendment, that if no expressions of interest or applications are received by the Department of Health and Human Services (HHS) during the 60 days period, these properties will no longer be available for use to assist the homeless. In the case of buildings and properties for which no such notice is received, these buildings and properties shall be available only for the purpose of permitting a redevelopment authority to express in writing an interest in the use of such buildings and properties. These buildings and properties shall be available for a submission by such redevelopment authority exclusively for one year. Buildings and properties available for a redevelopment authority shall not be available for use to assist the homeless. If a redevelopment authority does not express an interest in the use of the buildings or properties or commerce the use of buildings or properties within the applicable time period such buildings and properties shall then be republished as properties available for use to assist the homeless pursuant to section 501 of the Stewart B. McKinney Homeless Assistance Act.

Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Barbara Richards at the address listed at the beginning of this notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Crops of Engineers: Gary B. Paterson, Chief, Base Realignment and Closure Office, Directorate of Real Estate, 20 Massachusetts Ave., NW., rm. 4133, Washington, DC 20314–1000; (202) 272–0520; U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; U.S. Air Force: John Carr, Realty Specialist, HQ–AFBDA/BDR, Pentagon, Washington, DC 20330–5130; (703) 696–5569; (These are not toll-free numbers).

Dated: March 25, 1994.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 03/25/94

Suitable/Available Properties

Buildings (by State)

California

3 Housing Buildings.
Sacramento Army Depot.
Sacramento, CA 95813–5053.
Landholding Agency: COE–BC.
Property Number: 329320004.
Status: Pryor Amendment.
Base Closure.
Number of Units: 3.

Comment: Ranging in size from 1,320 sq. ft. to 2,343 sq. ft. including garages, scheduled to be vacated 10/94.

7 Office/Admin. Buildings.
Sacramento Army Depot.
Sacramento, CA 95813–5053.
Landholding Agency: COE–BC.
Property Number: 329320005.
Status: Pryor Amendment.
Base Closure.
Number of Units: 7.
Comment: Ranging in size from 192 sq. ft. to 109,655 sq. ft., scheduled to be vacated 10/94.

20 Recrea/Stores/Svcs Bldgs.
Sacramento Army Depot.
Sacramento, CA 95813–5053.
Landholding Agency: COE–BC.
Property Number: 329320006.
Status: Pryor Amendment.
Base Closure.
Number of Units: 20.
Comment: Ranging in size from 100 sq. ft. to 9,871 sq. ft., scheduled to be vacated 10/94.

23 Warehouses/Storage Bldgs.
Sacramento Army Depot.
Sacramento, CA 95813–5053.
Landholding Agency: COE–BC.
Property Number: 329320007.
Status: Pryor Amendment.
Base Closure.
Number of Units: 23.
Comment: Ranging in size from 119 sq. ft. to 261,360 sq. ft., scheduled to be vacated 10/94.

13 Communication/Elec. Bldgs.
Sacramento Army Depot.
Sacramento, CA 95813–5053.
Landholding Agency: COE–BC.
Property Number: 329320008.
Status: Pryor Amendment.
Base Closure.
Number of Units: 13.
Comment: Electronics maintenance shops and equipment facilities ranging in size from 756 sq. ft. to 163,961 sq. ft., scheduled to be vacated 10/94.

1 Hospital Building.
Sacramento Army Depot.
Sacramento, CA 95813–5053.
Landholding Agency: COE–BC.
Property Number: 329320009.
Status: Pryor Amendment.
Base Closure.
Number of Units: 1.
Comment: 6,622 sq. ft. clinic without beds, scheduled to be vacated 10/94.

1 Dining Hall Building.
Sacramento Army Depot.
Sacramento, CA 95813–5053.
Landholding Agency: COE–BC.
Property Number: 329320010.
Status: Pryor Amendment.
Base Closure.
Number of Units: 1.
Comment: 12,550 sq. ft. post restaurant, scheduled to be vacated 10/94.

14 Miscellaneous Buildings.
Sacramento Army Depot.
Sacramento, CA 95813–5053.
Landholding Agency: COE–BC.
Property Number: 329320011.
Status: Pryor Amendment.
Base Closure.
Number of Units: 14.
Comment: Ranging in size from 120 sq. ft. to 5,612 sq. ft., including sentry stations, gen. inst. bldgs. and waste treatment facilities, scheduled to be vacated 10/94.

6 Maint/Engineering Bldgs.
Sacramento Army Depot.
Sacramento, CA 95813–5053.
Landholding Agency: COE–BC.
Property Number: 329320012.
Status: Pryor Amendment.
Base Closure.
Number of Units: 6.
Comment: Ranging in size from 437 sq. ft. to 8,707 sq. ft., scheduled to be vacated 10/94.

2 Vehicle Shop Buildings.
Sacramento Army Depot.
Sacramento, CA 95813–5053.
Landholding Agency: COE–BC.
Property Number: 329320013.
Status: Pryor Amendment.
Base Closure.
Number of Units: 2.
Comment: Ranging in size from 600 sq. ft. to 48,363 sq. ft., scheduled to be vacated 10/94.

18 Hazardous Storage Buildings.
Sacramento Army Depot.
Sacramento, CA 95813–5053.
Landholding Agency: COE–BC.
Property Number: 329320014.
Status: Pryor Amendment.
Base Closure.
Number of Units: 18.
Comment: Flammable material storehouses ranging in size from 72 sq. ft. to 4,100 sq. ft., scheduled to be vacated 10/94.

Indiana

46 Family Housing Residences.
Fort Benjamin Harrison.
Lawrence Co: Marion, IN 46216–5000.
Landholding Agency: COE–BC.
Property Number: 329210068.
Status: Pryor Amendment.
Base Closure.
Number of Units: 46.
Comment: 1,260 to 12,051 sq. ft., brick frame, 1 and 2 story, scheduled to be vacated 9/95.

73 Living Quarters.
Fort Benjamin Harrison.
Lawrence Co: Marion IN, 46216–5000.
Landholding Agency: COE–BC.
Property Number: 329210069.
Status: Pryor Amendment.
Base Closure
Number of Units: 73.
Comment: 4720 to 68405 sq. ft., brick or concrete block frame, includes barracks, scheduled to be vacated 9/95.

26 Office/Administration Bldgs.
Fort Benjamin Harrison.
Lawrence Co: Marion IN, 46216–5000.
Landholding Agency: COE–BC.
Property Number: 329210070.
Status: Pryor Amendment.
Base Closure.
Number of Units: 26.
Comment: 1210 to 789018 sq. ft., wood, brick, concrete or concrete block frame, includes personnel bldgs., general purpose bldgs., scheduled to be vacated 9/95.

24 Recreational Facilities.
Fort Benjamin Harrison.
Lawrence Co: Marion IN, 46216–5000.
Landholding Agency: COE–BC.
Property Number: 329210071.
Status: Pryor Amendment.
Base Closure.
Number of Units: 24.
Comment: 152 to 31439 sq. ft., wood, brick, concrete or concrete block frame, includes canteen, gym, golf course, swimming pool, riding stable, tennis court, sched. to be vacated 9/95.

2 Child Care Centers.
Fort Benjamin Harrison.
Lawrence Co: Marion IN, 46216–5000.
Landholding Agency: COE–BC.
Property Number: 329210072.
Status: Pryor Amendment.
Base Closure.
Number of Units: 2.
Comment: 5818 sq. ft. to 14457 sq. ft., brick frame, scheduled to be vacated 9/95.

4 Dining Halls.
Fort Benjamin Harrison.
Lawrence Co: Marion IN, 46216–5000.
Landholding Agency: COE–BC.
Property Number: 329210073.
Status: Pryor Amendment.
Base Closure.
Number of Units: 4.
Comment: 11075 to 31439 sq. ft., brick frame, scheduled to be vacated 9/95.

12 Stores/Service Facilities.
Fort Benjamin Harrison.
Lawrence Co: Marion IN, 46216–5000.
Landholding Agency: COE–BC.
Property Number: 329210074.
Status: Pryor Amendment.
Base Closure.
Number of Units: 12.
Comment: 140 to 68899 sq. ft., brick, wood, concrete or concrete block frame, includes restaurant, commissary, stores, service outlet, scheduled to be vacated 9/95.

Hospital.
Fort Benjamin Harrison.
Lawrence Co: Marion IN, 46216–5000.
Landholding Agency: COE–BC.
Property Number: 329210075.
Status: Pryor Amendment.
Base Closure.
Number of Units: 1.
Comment: 104804 sq. ft., brick frame, scheduled to be vacated 9/95.

2 Chapels.
Fort Benjamin Harrison.
Lawrence Co: Marion IN, 46216–5000.
Landholding Agency: COE–BC.
Property Number: 329210076.
Status: Pryor Amendment.
Base Closure.
Number of Units: 2.
Comment: 3747 to 16587 sq. ft., brick and aluminum frame, scheduled to be vacated 9/95.

1 Fire Facilities.
Fort Benjamin Harrison.
Lawrence Co: Marion IN, 46216–5000.
Landholding Agency: COE–BC.
Property Number: 329210078.
Status: Pryor Amendment.
Base Closure.
Number of Units: 1.
Comment: 3835 sq. ft., scheduled to be vacated 9/95.

2 Vehicle Shops.
Fort Benjamin Harrison.
Lawrence Co: Marion IN, 46216–5000.
Landholding Agency: COE–BC.
Property Number: 329210079.
Status: Pryor Amendment.
Base Closure.
Number of Units: 2.
Comment: 3470 sq. ft., concrete/asbestos frame, scheduled to be vacated 9/95.

6 Maintenance Engineering Facs.
Fort Benjamin Harrison.
Lawrence Co: Marion IN, 46216–5000.
Landholding Agency: COE–BC.
Property Number: 329210080.
Status: Pryor Amendment.
Base Closure.
Number of Units: 6.
Comment: 168 to 14074 sq. ft., wood, brick or concrete block frame, scheduled to be vacated 9/95.

4 Explosives/Munitions Bldgs.
Fort Benjamin Harrison.
Lawrence Co: Marion IN, 46216–5000.
Landholding Agency: COE–BC.
Property Number: 329210081.
Status: Pryor Amendment.
Base Closure.
Number of Units: 4.
Comment: 135 to 1138 sq. ft., concrete frame, inc. ammo magazines, scheduled to be vacated 9/95.

6 Hazardous Storage Buildings.
Fort Benjamin Harrison.
Lawrence Co: Marion IN 46216–5000.
Landholding Agency: COE–BC.
Property Number: 329210082.
Status: Pryor Amendment.
Base Closure.
Number of Units: 6.
Comment: 103 to 480 sq. ft., brick, steel, wood frame, inc. flammable materials storage, scheduled to be vacated 9/95.

1 Fuel Facility.
Fort Benjamin Harrison.
Lawrence Co: Marion IN 46216–5000.
Landholding Agency: COE–BC.
Property Number: 329210083.
Status: Pryor Amendment.
Base Closure.
Number of Units: 1.
Comment: 327 sq. ft., gas station building, scheduled to be vacated 9/95.

23 Warehouses.
Fort Benjamin Harrison.
Lawrence Co: Marion IN 46216–5000.
Landholding Agency: COE–BC.
Property Number: 329210084.
Status: Pryor Amendment.
Base Closure.
Number of Units: 23.
Comment: 960 to 56,650 sq. ft., concrete, brick or steel frame, scheduled to be vacated 9/95.

150 Miscellaneous Buildings.
Fort Benjamin Harrison.
Lawrence Co: Marion IN 46216–5000.
Landholding Agency: COE–BC.
Property Number: 329210085.
Status: Pryor Amendment.
Base Closure.
Number of Units: 150.
Comment: 31 to 211,364 sq. ft., wood, concrete block, concrete, brick or steel frame, inc. hdqtrs. and gen. instruction bldgs., training cntrs, detached garages, sched. to be vacated 9/95.

5 Multi-purpose Buildings.
Fort Benjamin Harrison.
Lawrence Co: Marion IN 46216–5000.
Landholding Agency: COE–BC.
Property Number: 329210086.
Status: Pryor Amendment.
Base Closure.
Number of Units: 5.
Comment: scheduled to be vacated 9/95.

Naval Marine Corps Reserve Ctr.
1903 St. Mary's Ave.
Ft. Wayne Co: Allen IN 46808–2331.
Landholding Agency: Navy Base Close.
Property Number: 789410017.
Status: Pryor Amendment.
Base Closure.
Number of Units: 1.
Comment: 136,000 sq. ft., 2-story, most recent use—classroom training, needs repair, scheduled to be vacated 4/94.

Louisiana

Naval Reserve Center.
Hadley Street and Garrett Road.
Monroe LA 71211–.
Landholding Agency: Navy Base Close.
Property Number: 789410016.
Status: Pryor Amendment.
Base Closure.
Number of Units: 1.
Comment: 22,700 sq. ft., 1-story, most recent use—classroom training and administration, scheduled to be vacated 4/94.

Ohio

Bldg. 812.
Rickenbacker Air National Guard.
Columbus Co: Franklin OH 43217–.
Landholding Agency: Air Force–BC.
Property Number: 199330019.
Status: Pryor Amendment.
Base Closure.
Number of Units: 1.
Comment: 13,988 sq. ft., 1-story cinderblock/brick frame, asbestos present, secured area w/alternate access, scheduled to be vacated 9/94.

4 Recreational Facilities.
Rickenbacker Air National Guard.
Columbus Co: Franklin OH 43217–.
Landholding Agency: Air Force–BC.
Property Number: 199330021.
Status: Pryor Amendment.
Base Closure.
Number of Units: 4.
Comment: 4 facilities, includes swimming pools, bathhouse, club, need repairs, secured area w/alternate access.

Virginia

3 Sentry Stations.
Cameron Station Military Reservation.
Alexandria VA 22314–.
Landholding Agency: COE–BC.
Property Number: 329410018.
Status: Pryor Amendment.
Base Closure.
Number of Units: 3
Comment: 14–28 sq. ft., 1-story aluminum frame, most recent use—sentry stations, scheduled to be vacated 9/95.

9 Warehouses.
Cameron Station Military Reservation.
Alexandria VA 22314–.
Landholding Agency: COE–BC.
Property Number: 329410019
Status: Pryor Amendment.
Base Closure.
Number of Units: 9.
Comment: 1-story masonry frame, most recent use—NCO dining, commissary, admin., restaurant, potential lead based paint, scheduled to be vacated 9/95.

Bldg. 26.
Cameron Station Military Reservation.
Alexandria VA 22314–.
Landholding Agency: COE–BC.
Property Number: 329410020.
Status: Pryor Amendment.
Base Closure.
Number of Units: 1
Comment: 10,000 sq. ft., 1-story, concrete frame, most recent use—warehouse, scheduled to be vacated 9/95.

Bldg. 10.
Cameron Station Military Reservation.
Alexandria VA 22314–.
Landholding Agency: COE–BC.
Property Number: 329410021.
Status: Pryor Amendment.
Base Closure.
Number of Units: 1.
Comment: 6950 sq. ft., 1-story brick frame, most recent use—maintenance shop, scheduled to be vacated 9/95.

Bldg. 15.
Cameron Station Military Reservation.
Alexandria VA 22314–.
Landholding Agency: COE–BC.
Property Number: 329410022.
Status: Pryor Amendment.
Base Closure.
Number of Units: 1.
Comment: 32487 sq. ft., 1-story brick frame, most recent use—print plant/admin., scheduled to be vacated 9/95.

Bldg. T16.
Cameron Station Military Reservation.
Alexandria VA 22314–.
Landholding Agency: COE–BC.
Property Number: 329410023.
Status: Pryor Amendment.
Base Closure.
Number of Units: 1.
Comment: 2120 sq. ft., 1-story wood/aluminum siding frame, most recent use—dispensary w/o beds, scheduled to be vacated 9/95.

Bldgs. 17, 22, T25.
Cameron Station Military Reservation.
Alexandria VA 22314–.
Landholding Agency: COE–BC.
Property Number: 329410024.
Status: Pryor Amendment.
Base Closure.
Number of Units: 3.
Comment: 495–17000 sq. ft., 1-story brick/wood/masonry frame, most recent use—admin., maintenance shop, scheduled to be vacated 9/95.

Bldg. 20.
Cameron Station Military Reservation.
Alexandria VA 22314–.
Landholding Agency: COE–BC.
Property Number: 329410025.
Status: Pryor Amendment.
Base Closure.
Number of Units: 1.

Comment: 22530 sq. ft., 1-story steel columns frame, most recent use—branch exchange, scheduled to be vacated 9/95.

Bldg. 21.
Cameron Station Military Reservation.
Alexandria VA 22314–.
Landholding Agency: COE–BC.
Property Number: 329410026.
Status: Pryor Amendment.
Base Closure.
Number of Units: 1.
Comment: 11540 sq. ft., 1-story masonry frame, most recent use—boiler plant bldg., scheduled to be vacated 9/95.

Bldg. 23.
Cameron Station Military Reservation.
Alexandria VA 22314–.
Landholding Agency: COE–BC.
Property Number: 329410027.
Status: Pryor Amendment.
Base Closure.
Number of Units: 1.
Comment: 3754 sq. ft., 1-story masonry frame, most recent use—service station, scheduled to be vacated 9/95.

Bldgs. 24, 49, 74.
Cameron Station Military Reservation.
Alexandria VA 22314–.
Landholding Agency: COE–BC.
Property Number: 329410028.
Status: Pryor Amendment.
Base Closure.
Number of Units: 3.
Comment: 1-story masonry frame, most recent use—pavillions, scheduled to be vacated 9/95.

Bldg. 30.
Cameron Station Military Reservation.
Alexandria VA 22314–.
Landholding Agency: COE–BC.
Property Number: 329410029.
Status: Pryor Amendment.
Base Closure.
Number of Units: 1.
Comment: 1252 sq. ft., 1-story masonry frame, most recent use—storage (pesticides), scheduled to be vacated 9/95.

Bldg. 31,34.
Cameron Station Military Reservation.
Alexandria VA 22314–.
Landholding Agency: COE–BC.
Property Number: 329410030.
Status: Pryor Amendment.
Base Closure.
Number of Units: 2.
Comment: 651 & 2592 sq. ft., 1-story wood/aluminum frame, need repairs, most recent use—flammable storage, scheduled to be vacated 9/95.

Bldg. 38.
Cameron Station Military Reservation.
Alexandria VA 22314–.
Landholding Agency: COE–BC.
Property Number: 329410031.
Status: Pryor Amendment.
Base Closure.
Number of Units: 1.
Comment: 180 sq. ft., 1-story aluminum/glass frame, most recent use—sentry station, scheduled to be vacated 9/95.

Bldgs. 69, 71.
Cameron Station Military Reservation.
Alexandria VA 22314–.
Landholding Agency: COE–BC.
Property Number: 329410032.
Status: Pryor Amendment.
Base Closure.
Number of Units: 2.
Comment: 160 & 240 sq. ft., 1-story corregated steel frame, most recent use—flammable storage, scheduled to be vacated 9/95.

Bldg. 68.
Cameron Station Military Reservation.
Alexandria, VA 22314–.
Landholding Agency: COE–BC.
Property Number: 329410033.
Status: Pryor Amendment.
Base Closure
Number of Units: 1.
Comment: 620 sq. ft., 1-story brick frame, most recent use—POL Bldg., scheduled to be vacated 9/95.

Land (by State)

California

Land.
Sacramento Army Depot.
Sacramento, CA 95813–5053.
Landholding Agency: COE–BC.
Property Number: 329320015.
Status: Pryor Amendment.
Base Closure
Number of Units: 1.
Comment: Approximately 485 acres including swimming pools, tennis courts, baseball and softball fields, golf course, roads, open areas etc.

Indiana

1 Aircraft/Airport Facility.
Fort Benjamin Harrison.
Lawrence Co: Marion, IN 46216–5000.
Landholding Agency: COE–BC.
Property Number: 329210077.
Status: Pryor Amendment.
Base Closure
Number of Units: 1.
Comment: 938 sq. yd.

Virginia

Recreation Parcels.
Cameron Station Military Reservation.
Alexandria, VA 22314–.
Landholding Agency: COE–BC.
Property Number: 329410014.
Status: Pryor Amendment.
Base Closure
Number of Units: 1.
Comment: 23 acres, most recent use—picnic area, tennis court, softball field, motor pool, scheduled to be vacated 9/95.

Parking Area—East.
Cameron Station Military Reservation.
Alexandria, VA 22314–.
Landholding Agency: COE–BC.
Property Number: 329410015.
Status: Pryor Amendment.
Base Closure
Number of Units: 1.
Comment: 2 acres, most recent use—parking lots, scheduled to be vacated 9/95.

Parking Area—South.
Cameron Station Military Reservation.
South of lake and east of 1st Street.
Alexandria, VA 22314–.
Landholding Agency: COE–BC.
Property Number: 329410016.
Status: Pryor Amendment.
Base Closure
Number of Units: 1.
Comment: 6 acres, most recent use—parking lot, scheduled to be vacated 9/95.

Parking Area—North.
Cameron Station Military Reservation.
Open areas north of lake and east of 1st St.
Alexandria, VA 22314–.
Landholding Agency: COE–BC.
Property Number: 329410017.
Status: Pryor Amendment.
Base Closure
Number of Units: 1.
Comment: 7.5 acres, most recent use—parking lot, scheduled to be vacated 9/95.

Unsuitable Properties

Buildings (by State)

Ohio

Bldg.—Gym.
Rickenbacker Air National Guard.
Columbus Co: Franklin, OH 43217–.
Landholding Agency: Air Force–BC.
Property Number: 199330017.
Status: Pryor Amendment.
Base Closure
Number of Units: 1.
Reason: Within 2000 ft. of flammable or explosive materials.

16 Office/Dormitories.
Rickenbacker Air National Guard.
Columbus Co: Franklin, OH 43217–.
Landholding Agency: Air Force–BC.
Property Number: 199330018.
Status: Pryor Amendment.
Base Closure
Number of Units: 16.
Reason: Secured Area; within 2000 ft. of flammable or explosive material.

Bldg. 856.
Rickenbacker Air National Guard.
Columbus Co: Franklin, OH 43217–.
Landholding Agency: Air Force–BC.
Property Number: 199330020.
Status: Pryor Amendment.
Base Closure
Number of Units: 1.
Reason: Secured Area.

2 Office Buildings.
Rickenbacker Air National Guard.
Columbus Co: Franklin, OH 43217–.
Landholding Agency: Air Force–BC.
Property Number: 199330022.
Status: Pryor Amendment.
Base Closure
Number of Units: 2.
Reason: Secured Area; within 2000 ft. of flammable or explosive material; within airport runway clear zone.

Virginia

Bldgs. 47, 48.
Cameron Station Military Reservation.
Alexandria, VA 22314–.
Landholding Agency: COE–BC.
Property Number: 329410034.
Status: Pryor Amendment.
Base Closure
Number of Units: 2.
Reason: Other.
Comment: Detached latrines.

Bldg. 11.
Cameron Station Military Reservation.
Alexandria, VA 22314–.
Landholding Agency: COE–BC.
Property Number: 329410035.

Status: Pryor Amendment.
Base Closure
Number of Units: 1.
Reason: Other.
Comment: Sewage pump.

[FR Doc. 94–6924 Filed 3–24–94; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Stillwater Area Remediation Plan

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meetings to scope the Stillwater Area Remediation Plan.

SUMMARY: Reclamation has initiated a Stillwater Area Remediation Plan in order to reduce contamination of wetlands in the Newlands Project area. Remediation planning will comply with the National Environmental Policy Act (NEPA). Issues to be addressed in the NEPA document will be identified through public scoping meetings and other information-gathering techniques.

DATES AND LOCATIONS: Scoping meetings will be held to begin identifying issues and concerns for those areas which are proposed to be evaluated. The time and location of the meetings are shown below; future meetings will be announced in local newspapers, newsletters, and mailings.

- April 19, 1994, 6:30 p.m., Fernley Senior Citizen Center, 1170 East Newland, Fernley NV.
- April 20, 1994, 7 p.m., Fallon Community Center, 100 Campus Way, Fallon NV.
- April 21, 1994, 7 p.m., Fallon Tribal Administrative Building, Fallon Indian Reservation, Fallon NV.

FOR FURTHER INFORMATION CONTACT: Dave Overvold, Study Team Leader, Lahontan Basin Projects Office, Bureau of Reclamation, PO Box 640, Carson City, Nevada; telephone: (702) 882–3436.

SUPPLEMENTARY INFORMATION: Remediation planning is part of the Department of the Interior's National Irrigation Water Quality Program, which is an effort to identify the nature and extent of irrigation-induced water quality problems that may exist at Reclamation projects in the Western United States.

Dated: March 18, 1994.

Donald R. Glaser,

Deputy Commissioner.

[FR Doc. 94–7071 Filed 3–24–94; 8:45 am]
BILLING CODE 4310–94–M

Fish and Wildlife Service

[FES 94–7]

Availability of a Final Environmental Impact Statement

AGENCIES: U.S. Fish and Wildlife Service (Service), Department of the Interior (lead agency); U.S. Bureau of Land Management, Department of the Interior, and U.S. Air Force, Department of the Air Force (cooperating agencies).

ACTION: Notice of Availability of a final Environmental Impact Statement (EIS) on the proposed mineral withdrawal at Desert National Wildlife Range, Clark and Lincoln Counties, Nevada.

ADDRESSES: For further information or to request a copy of the final EIS, contact Mark Strong, EIS Team Leader, Desert National Wildlife Range Mineral Withdrawal, U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, Oregon 97232–4181, (503) 231–6164 or Ken Voget, Refuge Manager, Desert National Wildlife Range, 1500 N. Decatur Boulevard, Las Vegas, Nevada 89108, (702) 646–3401.

SUPPLEMENTARY INFORMATION: The Service proposes to withdraw approximately 770,000 acres of the Desert National Wildlife Range (Range) from entry from locatable minerals for a period of 20 years. The purpose of the proposed withdrawal is to protect the biological and cultural resources of the Range and prevent uses that would be incompatible with the purposes of the Range. The Range was originally established for the protection, enhancement, and maintenance of wildlife, especially the desert bighorn sheep. Other approved purposes of the Range include conservation of biological diversity with emphasis on endangered and threatened species and protection and maintenance of cultural resources.

This EIS provides an assessment of the affects of alternative proposals for withdrawal or exploration and development of minerals on the Range: (A) Wildlife Range Withdrawal, (B) No Action, and (C) Limited Entry. The agencies' preferred alternative is (A) Wildlife Range Withdrawal. A Record of Decision will be issued not sooner than 30-days following the date of this notice.

Dated: March 17, 1994.

Jonathan Deason,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 94–6912 Filed 3–24–94; 8:45 am]
BILLING CODE 4310–55–M

Clean Vessel Act Education/ Information Scoping Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Fish and Wildlife Service (Service) is announcing a scoping meeting to determine the need for developing an education/information program for the Clean Vessel Act at the national level. Funds are currently provided to States to develop education/information programs, but the extent of overlap in developing products is not known since no overview is provided at the national level. The meeting is to determine (1) education/information needs, (2) the extent of education/information currently provided, (3) the role, if any, of the Service is providing education/information, and (4) priorities for accomplishing education/information at the national level.

DATES: The scoping meeting will take place on May 17, 1994, 9 a.m. to 4 p.m.

ADDRESSES: The scoping meeting will take place in room 200, 4401 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Columbus Brown, Chief, Division of Federal Aid, Fish and Wildlife Service, U.S. Department of the Interior, 1849 C Street, NW., MS 140 ARLSQ, Washington, DC 20240, (703) 358–2156.

SUPPLEMENTARY INFORMATION: One of the purposes of the Clean Vessel Act is to provide grant funds to States to educate boaters: (1) On where pumpouts and dump stations are located so they can dispose of recreational boat sewage in an environmentally sound manner, and (2) on the environmental benefits of using pumpouts and dump stations. Currently, Federal, State, local and marine industry groups provide education/information to various audiences in boating, either through the Clean Vessel Act or through other programs. However, there is no comprehensive approach to this education/information dissemination. The extent of the education/information currently provided is not known, but indications are that education/information is not provided to the different audiences uniformly. Some audiences are not targeted in some States, some information is not provided in some States, and some States have not submitted education proposals under the Clean Vessel Act. To provide for the most successful education program, all appropriate audiences should be targeted. Also, information exchange may result in a more efficient and less costly program. Lastly, the

program may benefit from generic educational materials produced at the national level. The result would be that more pumpout and dump stations could be constructed to better attain the goal of the Clean Vessel Act to increase water quality.

The purposes and agenda of the scoping meeting, therefore, are: (1) To determine the extend of education/information, methods and target audiences needed, (2) to establish the extent of education/information, methods and target audiences currently provided that is applicable to the success of the Clean Vessel Act, (3) to assess what portion of the education/information program, if any, is most appropriately done at the national level and, (4) to prioritize the national needs, if any, so that the most important education/information tasks can be accomplished first.

This will be a participatory meeting, with attendees requested to provide input as to education/information, methods and target audience needs, and what products they are currently contributing to the pumpout/dump station education program. Sample products are welcome.

Dated: March 18, 1994.

J.L. Gerst,

U.S. Fish and Wildlife Service.

[FR Doc. 94–7141 Filed 3–24–94; 8:45 am]

BILLING CODE 4310–55–M

Wild Bird Conservation Act (WBCA) of 1992; Decision Concerning Petition for Suspension of Imports of African Grey Parrots to the United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of a final decision on a petition.

SUMMARY: The U.S. Fish and Wildlife Service (Service) received a petition from the Environmental Investigation Agency to suspend the import of African grey parrots from Côte d'Ivoire, Togo, and Benin to the United States under the Wild Bird Conservation Act of 1992 (WBCA). The Service has reached a final decision on the petition and determines that sufficient information exists to suspend the importation of African grey parrots (*Psittacus erithacus* and all subspecies) from Côte d'Ivoire, Togo, Benin, and Guinea. Information the Service has gathered, including the petition, supports the suspension of the import of African grey parrots under the WBCA, in the interest of conservation of the species. However, because a statutorily mandated moratorium on importation of this species became effective on October 23, 1993, except as allowed pursuant to regulations which the Service has promulgated, no additional prohibition on importation of this species is necessary. The Service notes however that it is required under the WBCA to issue and publish notice of the final decision reached on this petition. The Service will take into account its decision on this petition in reviewing any future applications for the importation of African grey parrots from Côte d'Ivoire, Togo, Benin, and Guinea to the United States under the WBCA.

FOR FURTHER INFORMATION CONTACT: Dr. Susan S. Lieberman, Office of Management Authority, at the above address, telephone (703) 358–2093.

SUPPLEMENTARY INFORMATION: On October 23, 1992, the Wild Bird Conservation Act (WBCA) of 1992 (16 U.S.C. 4901–4916) was signed into law. The purposes of the WBCA include promoting the conservation of exotic birds by: ensuring that all imports into the United States of species of exotic birds are biologically sustainable and not detrimental to the species; ensuring that imported birds are not subject to inhumane treatment; and assisting wild bird conservation and management programs in countries of origin.

Pursuant to Section 105(b) of the WBCA (16 U.S.C. 4904), "Emergency Authority to Suspend Imports of Listed Species," the WBCA authorizes the Secretary of the Interior to suspend the importation of exotic birds of any species that is listed in any Appendix to the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES, or Convention), if the Secretary determines that:

(A)(i) Trade in that species is detrimental to the species,

(ii) There is not sufficient information available on which to base a judgment that the species is not detrimentally affected by trade in that species, or

(iii) Remedial measures have been recommended by the Standing Committee of the Convention that have not been implemented; and

(B) The suspension might be necessary for the conservation of the species."

This final decision is based on various documents, including published and unpublished studies. Documents on which this final decision is based are on file in the Service's Office of Management Authority, and are available on request.

On February 22, 1993, the Service received a letter from G. A. Punguse, Chief Game and Wildlife Officer for Ghana, requesting that the United States stop African grey parrot shipments from Togo to the United States and stating that no African grey parrot populations are found in Togo and that all of the birds exported from Togo are actually smuggled from Ghana.

On April 12, 1993, the Environmental Investigation Agency submitted a petition to the Service requesting the Secretary to suspend imports of African grey parrots from Côte d'Ivoire, Togo, and Benin to the United States.

On April 15, 1993, the Service received a letter from the CITES Secretariat in Switzerland noting that a CITES report (Dandliker, 1992) on the African grey parrot in Ghana indicates that the majority of the specimens that are exported from Côte d'Ivoire are in reality smuggled into Côte d'Ivoire from Ghana and other countries. The letter further noted that the Secretariat had corresponded with the Government of Côte d'Ivoire, expressed its concerns that large number of birds may have been smuggled from Ghana, and recommended that Côte d'Ivoire stop exports of African grey parrots until populations could be surveyed.

At the eighth meeting of the CITES Conference of the Parties in Kyoto, Japan, Resolution Conf. 8.9 was adopted. The Resolution, entitled "The Trade in Wild-Caught Animal Specimens," established a process whereby the CITES Animals Committee would communicate primary and secondary recommendations to CITES Parties regarding species that had been identified as high-priority species. The African grey parrot is such a species. The resolution established a process whereby the CITES Secretariat would assess whether a Party had implemented specific recommendations; any failure to so demonstrate would be brought to the attention of the CITES Standing Committee. The Secretariat sent recommendations from the Animals Committee to several CITES Parties in June 1992; those that did not reply were sent reminders in October 1992 and January 1993. Based on the report of the Secretariat to the March 1993 meeting of the CITES Standing Committee in Washington, DC, the Standing Committee unanimously recommended to all Parties that imports be suspended for a number of species, including the African grey parrot from Guinea.

On April 20, 1993, the CITES Secretariat issued Notification to the Parties No. 737, which notified the Parties of the Standing Committee's recommendation to suspend imports of *Psittacus erithacus* from Guinea.

On May 7, 1993, the CITES Secretariat issued Notification to the Parties No. 746, which "strongly recommended"

that Parties "not accept any comparable documentation from Côte d'Ivoire for trade in specimens of African grey parrots (*P. erithacus*), including the subspecies *P. e. erithacus* and *P. e. timneh*." This recommendation remains in effect until the CITES Secretariat is satisfied that the government of Côte d'Ivoire has "completed surveys on its wild populations of African grey parrots and based on those surveys, establishes a management plan for sustainable international trade; and has taken appropriate measures to prevent the illegal import of grey parrots from other countries, and to ensure that shipments of grey parrots that are exported from Côte d'Ivoire do not include birds that have been imported illegally." The Notification notes that a CITES report on the grey parrot in Ghana indicates that the majority of *P. erithacus* exported from Côte D'Ivoire are birds that are smuggled from Ghana and other countries.

On August 25, 1993, the Service published a notice in the **Federal Register** (58 FR 44847) of receipt of the petition to suspend the import of African grey parrots from Côte d'Ivoire, Togo, and Benin to the United States under the Wild Bird Conservation Act of 1992 (WBCA). That notice proposed suspension of imports of African grey parrots from those countries and Guinea, and invited public comments.

On October 23, 1993, the importation of African grey parrots as well as all other CITES-listed bird species (with some exceptions) are prohibited, as provided by the WBCA, except as allowed pursuant to regulations which the Service has promulgated under the WBCA (see 58 FR 60524). The Service notes however that it is required under the WBCA to issue and publish in the **Federal Register** a final action on the petition, by not later than 90 days after the end of the period for public comment. Since the statutorily mandated moratorium makes such a final action moot, and any action to suspend imports of African grey parrots from Côte d'Ivoire, Togo, and Benin to the United States would now be unnecessary, the Service instead hereby publishes its findings and decision, and a summary of public comments received on the petition.

The African grey parrot (*Psittacus erithacus*) is a medium-sized parrot endemic to Africa. It is distributed in Central Africa from the Gulf of Guinea Islands and the west coast east to western Kenya and northwestern Tanzania; it possibly ranges to Mt. Kilimanjaro in Tanzania (Forshaw, 1989). They are primarily birds of lowland forests.

There are three subspecies recognized: *Psittacus e. erithacus*, *P. e. princeps*, and *P. e. timneh* (Forshaw, 1989; Howard and Moore, 1991). The nominate subspecies, *P. e. erithacus*, is widespread in equatorial Africa. It ranges from southeastern Côte d'Ivoire to western Kenya and south to northern Angola, southern regions of Zaire and to northwestern Tanzania. *P. e. princeps*, which some authorities believe cannot be distinguished from the nominate subspecies, is restricted to the islands of Principe and Bioko in the Gulf of Guinea; while *P. e. timneh* is confined to southern Guinea, Sierra Leone, Liberia and the westernmost parts of Côte d'Ivoire.

The nominate subspecies, *P. e. erithacus* ("Redtail"), can be distinguished from *P. e. timneh* ("Maroontail") by morphological characteristics. "Red-tailed African grey parrots" have an all-black bill and a bright red tail, whereas "Maroon-tailed African grey parrots" have a pale upper bill, a much darker maroon-red (often with a lot of dark-brown) tail, their general body color is darker, and on average, they are about 15% smaller in size than Red-tailed African grey parrots (Dandliker, 1992). Within the Red-tailed African grey parrots (*P. e. erithacus*), there exists a gradient in body size between western and eastern populations (Dandliker, 1992). Traders distinguish between the "Ghanaian Redtails" and the "Congo or Cameroonian Redtails." "Congo Red-tailed African grey parrots" are larger and heavier than those from the western parts of the range.

Although African grey parrots have long been popular in the pet bird trade, very little scientific data on the status, population sizes, and demography of wild populations exists. The trade in this species has long been an issue of concern. Between 1983 and 1989, 346,782 African grey parrots were exported from 20 African countries, including two (Sénégal and Togo) which are not believed to be range states (Environmental Investigation Agency 1993). In 1991, 10,651 *Psittacus erithacus* and 3,976 *P. e. timneh* were imported into the United States. As of September 19, 1993, 7,821 *Psittacus erithacus* and 2,158 *P. e. timneh* had been imported into the United States since enactment of the WBCA, under the quota established by the WBCA and published in the **Federal Register** (58 FR 19840).

A CITES Report (Dandliker, 1992) estimated the total population of Red-tailed African grey parrots (*P. e. erithacus*) in West Africa to be between 40,000 and 100,000 birds. The largest population of Red-tailed African grey parrots occurs in Ghana, where the population is estimated to be between 30,000 and 80,000 birds (75%–80% of the total West African population) (Dandliker, 1992).

Since 1980, Ghana has prohibited the export of its African grey parrots. This ban was found to be necessary by the Ghana Department of Game and Wildlife "because of the large number of birds exported annually without scientific information to determine a sustainable off-take which would ensure the survival of the species in the wild" (Letter from G. Punguse, 1993). The recent CITES Secretariat-sponsored survey of African grey parrots in Ghana (Dandliker, 1992) concluded that the majority of the wild populations of Red-tailed African grey parrots are found in Ghana, with a few populations along the Côte d'Ivoire eastern boundary with Ghana and none in Togo. The CITES report (Dandliker, 1992) found that the majority of African grey parrots (*P. e. erithacus*) exported from Côte d'Ivoire are, in reality, birds that are smuggled into Côte d'Ivoire from Ghana, and *all* the African grey parrots exported from Togo come from Ghana.

The Environmental Investigation Agency (EIA, 1993) studied the illegal trade in African grey parrots from Ghana, at the request of the Ghanaian Government. Statements made by traders to EIA appear to substantiate the findings of the CITES Report concerning the illegal trade in African grey parrots from Côte d'Ivoire. Statements made by traders to EIA also point to illegal trade in African grey parrots from Benin, which originated in Ghana. After a review of the petition by the Environmental Investigation Agency, the aforementioned Notifications from the CITES Secretariat, the CITES Report (Dandliker, 1992), and information available from a recent law enforcement investigation, the Service concludes there was substantial scientific and commercial information that the suspension of imports of African grey parrots from Côte d'Ivoire, Togo, and Guinea, is warranted under the WBCA, and would have been imposed, had the statutorily mandated moratorium not been in effect. Information related to imports of African grey parrots from Benin was more limited but sufficient. In the **Federal Register** notice of August 25, 1993, the Service requested information from the public on exports or re-exports of African grey parrots from Benin. No such information was submitted. There is no information available on which to base a judgment that African grey parrot exports from Benin are not detrimental to the species.

Information available to the Service indicated that in Ghana, although the African grey parrot is protected from export, it has been depleted by the "laundering" of smuggled birds through exports of the species from Côte d'Ivoire, Togo, and possibly Benin.

Pursuant to section 105(b) of the WBCA (16 U.S.C. 4904), the Service finds that a suspension in the trade of African grey parrots from Ghana, Côte d'Ivoire, Togo, Guinea, and Benin is necessary for the conservation of the species. The Service concludes that the trade in African grey parrots from Côte d'Ivoire, Togo, and Guinea is detrimental to the survival of the species in Ghana. The Service finds that there is not sufficient information available on which to base a judgment that the species in Côte d'Ivoire, Togo, Guinea, and Benin is not detrimentally affected by trade. The Service finds that in the case of Guinea and Côte d'Ivoire, remedial measures recommended by the Standing Committee of the Convention have not been implemented. The only reason the Service is not now imposing this moratorium as proposed in its notice of August 25, 1993, is the fact that the moratorium is already in place, pursuant to the WBCA and regulations in 50 CFR part 15.

Comments and Other Information Received

Comments on the proposed decision on the petition were received from five interested persons and organizations. Specifically, written comments were received from two individuals, one importer, one avicultural organization, and one pet industry representative.

No comments were received which provided the Service with additional scientific information on the status of African grey parrots in Côte d'Ivoire, Togo, Benin, or Guinea. In making this final decision the Service depended on the information provided with the petition and, most importantly, the CITES Secretariat, including recent reports. Since the notice of receipt of the petition and proposed action was published in the **Federal Register**, a recent law enforcement investigation has further substantiated information contained in the CITES Secretariat-sponsored survey of African grey parrots in Ghana, that African grey parrots are smuggled to Côte d'Ivoire from other African countries.

Three commenters stated that they were concerned about the timing of the petition, in light of the statutorily mandated moratorium that became effective on October 23, 1993. The Service agrees that the importation of African grey parrots as well as all other CITES-listed bird species (with some exceptions) are prohibited, except as allowed pursuant to regulations that the Service has promulgated under the WBCA (see 58 FR 60524). The Service notes however that it is required under the WBCA to issue and publish in the **Federal Register** a final determination on the petition, by not later than 90 days after the end of the period for public comment. Therefore, the Service is making a final decision on this petition; no further action is promulgated only because the statutorily mandated moratorium makes any such action moot.

One commenter believed that any blanket cessation of importation which might affect cooperative breeding programs would be ill-advised and contradictory to the intent of the Wild Bird Conservation Act. The Service disagrees that the cessation of importation of particular species from certain countries is contrary to the intent of the WBCA, if it is in the interest of the conservation of the species. The WBCA allows the Secretary to establish, modify, or terminate any prohibition, suspension, or quota on importation of any species of exotic bird where it is determined that the trade in such species is detrimental to the species' survival in the wild. Furthermore, the suspension of imports of a species from one or more countries does not impact on a person's ability to apply for approval of a cooperative breeding program for that species.

One commenter, although not necessarily in disagreement with the proposed action by the Service, questioned whether the petition warranted the type of emergency relief sought in the petition in light of the tremendous pressure the Service was under to promulgate regulations for the WBCA and staffing problems. The Service notes that the action proposed in the notice of August 25, 1993, did not constitute emergency relief, but rather constituted compliance with the petition review process outlined in the statute. The Service does appreciate the public's concern that promulgation of regulations implementing the WBCA is a resource-intensive endeavor.

One commenter questioned the appropriateness of relying upon petitions supported by incomplete documents. The Service notes that its finding is based on various documents, including published and unpublished studies and law enforcement investigations. The commenter noted that part of the petition submitted by the Environmental Investigation Agency had some names blacked out. Those omissions were by the petitioner, and in no way affected the Service's findings. The Service gathered documents during its review of the petition; these included the recent CITES Secretariat-sponsored survey of African grey parrots in Ghana (Dandliker, 1992), CITES Notifications to the Parties, and information from recent law enforcement investigations.

One commenter supported the suspension of African grey parrots from Côte d'Ivoire, Togo, and Benin to the United States, but asked that the Republic of Niger and other range States of African grey parrots be included. The commenter had lived in Niger and frequently observed the parrot in its natural habitat in Niger. The commenter expressed concern because Niger shares a border with Benin. Although the Service is concerned with the status of African grey parrots throughout its range, the Service does not have scientific or law enforcement information available to it to assess the status of African grey parrots in Niger to make the relevant findings. Furthermore, since Niger was not included in the **Federal Register** notice of August 25, 1993 that called for public comments, the Service does not consider it appropriate to add it in at this time. Should such information become available on Niger, or any other country, the Service will review it and include it in its record of information on the African grey parrot.

One commenter questioned the allegations of smuggling in the petition and the supporting information for such allegations. The Service finds that there is sufficient supporting information to document smuggling activities involving African grey parrots. The recent CITES Secretariat-sponsored survey of African grey parrots in Ghana (Dandliker, 1992) showed that the majority of African grey parrots (*P. e. erithacus*) exported from Côte d'Ivoire are, in reality, birds that are smuggled into Côte d'Ivoire from Ghana, and it showed that all the African grey parrots exported from Togo likely come from Ghana. As an example of serious law enforcement problems regarding the African grey parrot, a recent law enforcement investigation resulted in a California bird importer pleading guilty to conspiring to smuggle African grey parrots into the United States. The importer conspired to import approximately 1,478 "Congo" African grey parrots which had been illegally taken from their wild habitat in Zaire, where the commercial trade in African grey parrots was banned. The parrots were smuggled from Zaire to Sénégal, where the exporters obtained false CITES export documents to accompany the shipments to the United States. The

CITES export documents falsely stated that the parrots originated in Guinea or Côte d'Ivoire, countries where the "Congo" African grey parrot does not occur.

One commenter disagreed with the proposed action, stating that the suspension was not warranted, and that African grey parrots should be allowed to be imported into the United States from Côte d'Ivoire, Togo, and Benin. The Service disagrees, based on the aforementioned discussion. At any rate, this suspension is now in effect independent of this petition process.

One commenter questioned if the suspension would affect the import of "Timneh" African grey parrots (*Psittacus e. timneh*) from Côte d'Ivoire. This ruling would have affected the importation of all subspecies of African grey parrots from Côte d'Ivoire, including *Psittacus e. timneh*.

One commenter questioned if the suspension would have affected the import of captive-bred African grey parrots. The statutorily imposed suspension on the import of all CITES-listed birds makes that question moot, as it includes all African grey parrots. The Service will shortly propose regulations pursuant to Section 107 of the WBCA, which will allow for approval of foreign facilities breeding exotic birds in captivity. If a foreign facility is approved as a qualifying facility, species of exotic birds for which the facility is approved can be imported into the United States from that facility. When those regulations are finalized, any foreign facility breeding an otherwise prohibited species, including the African grey parrot, may apply to the Service for approval, based on the application and issuance requirements of the relevant regulations. However, if imports from a given country are specifically prohibited, based on a petition submitted pursuant to the WBCA, the Service would consider it very difficult for a facility in that country to qualify as an approved breeding facility.

References Cited

Dandliker, G. 1992. The grey parrot in Ghana: A population survey, a contribution to the biology of the species, a study of its commercial exploitation and management recommendations. A report on CITES Project S–30 to the CITES Secretariat. 132 pp.

Environmental Investigation Agency. 1993. Investigation into the trade in African grey parrots from Ghana. 146 pp. London, Great Britain.

Forshaw, J. 1989. Parrots of the World. 3rd (revised) edition. Lansdowne Editions, Melbourne, Australia.

Howard, R. and A. Moore. 1991. A Complete Checklist of the Birds of the World. 2nd edition. Academic Press Ltd., London, England.

CITES Secretariat Notification to the Parties No. 737. Lausanne, 20 April 1993. Significant Trade in Animal Species included in Appendix II: Recommendations of the Standing Committee.

CITES Secretariat Notification to the Parties No. 746. Lausanne, 7 May 1993. Côte d'Ivoire: Trade in African grey parrots.

Authors

The authors of this notice are Dr. Rosemarie Gnam (Division of Law Enforcement) and Dr. Susan S. Lieberman (Office of Management Authority), U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/358–2093).

[Final ruling on petition: Wild Bird Conservation Act (WBCA) of 1992; Final decision on petition to suspend imports of African grey parrots into the United States from certain countries]

Dated: December 23, 1993.

Richard N. Smith,

Deputy Director.

[FR Doc. 94–7072 Filed 3–24–94; 8:45 am]

BILLING CODE 4310–55–P

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Tootsie Roll Industries, Inc., 7401 South Cicero Avenue, Chicago, Illinois 60629, A Virginia Corporation.

2. Wholly owned subsidiaries which will participate in the operations, and the address of their respective principal offices:

Cella's Confections, Inc., Incorporated in Virginia

Sweets Mix Company, Incorporated in Illinois

Tootsie Roll of Canada Ltd., c/o Livingston Warehouse, Incorporated in Canada

Charms Company, Incorporated in Delaware

Tootsie Roll Management, Inc., d/b/a Tootsie Roll Express, Incorporated in Illinois

Cambridge Brands, Inc., Incorporated in Delaware

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–7089 Filed 3–24–94; 8:45 am]

BILLING CODE 7035–01–M

Motor Passenger Carrier or Water Carrier Finance Application Under 49 U.S.C. 11343–11344

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties of, or acquire control of motor passenger carriers or water carriers under 49 U.S.C. 11343–11344. The applications are governed by 49 CFR part 1182, as revised in *Pur., Merger & Cont.—Motor Passenger & Water Carriers*, 5 I.C.C. 2d 786 (9189). The findings for these applications are set forth at 49 CFR 1182.18. Persons wishing to oppose an application must follow the rules under 49 CFR part 1182, subpart B. If no one timely opposes the application, this publication automatically will become the final action of the Commission.

MC–F–20437, filed March 15, 1994. JTB Americas, Ltd.—Continuance in Control—Plaza Services Corporation, Sunrise Plaza Transportation Co., and United Charter Services, Inc.

Applicant's representative: James A. Spiegel, 65 Grand Teton Plaza, Madison, WI 53719. Applicant JTB Americas, LTD. (JTB) (MC–269991), a new carrier seeking contract carrier authority to transport passengers is in control of the following motor carriers of passengers: (1) Plaza Services Corporation (Plaza) (MC–230517), of New York, NY; (2) Sunrise Plaza Transportation Co. (Sunrise) (MC–224261), of Los Angeles, CA; and United Charter Service, Inc. (United) (MC–146450), of San Francisco, CA. Upon issuance of authority to JTB, JTB will be a regulated carrier in control of three regulated carriers.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–7090 Filed 3–24–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that proposed Final Judgments, Stipulations, and a

Competitive Impact Statement have been filed with the United States District Court for the District of Utah in *United States* v. *Utah Society For Healthcare Human Resources Administration, et al.*, Civil No. 94C282G as to the Utah Society For Healthcare Human Resource Administration; the Utah Hospital Association; St. Benedict's Hospital; IHC Hospitals, Inc.; Holy Cross Hospital of Salt Lake City; Pioneer Valley Hospital, Inc.; Lakeview Hospital, Inc.; Mountain View Hospital, Inc.; Brigham City Community Hospital, Inc.; and HCA Health Services of Utah, Inc. d/b/a St. Mark's Hospital.

The Complaint alleges that the defendants conspired to exchange wage information about registered nurses with the purpose and effect of stabilizing and lowering registered-nurse wages in Salt Lake County, Utah.

The proposed Final Judgments prohibit the defendants from continuing their conspiracy, and also require defendants to establish comprehensive antitrust compliance programs.

Public comment on the proposed Final Judgments is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to Gail Kursh, Chief, Professions and Intellectual Property Section, room 9903, U.S. Department of Justice, Antitrust Division, 555 4th Street NW., Washington, DC 20001 (telephone: 202/307–5799).

Joseph H. Widmar,

Deputy Assistant Attorney General, Antitrust Division.

In the United States District Court, District of Utah, Central Division

United States of America, Plaintiff, v. Utah Society for Healthcare Human Resources Administration; Utah Hospital Association; St. Benedict's Hospital; IHC Hospitals, Inc.; Holy Cross Hospital of Salt Lake City; Pioneer Valley Hospital, Inc.; Lakeview Hospital, Inc.; Mountain View Hospital, Inc.; Brigham City Community Hospital, Inc.; and HCA Health Services of Utah, Inc. d/b/a St. Mark's Hospital, Defendants.; Stipulation

Civil Action No.

Filed:

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties to this Stipulation consent that a Final Judgment in the form attached may be filed and entered by the Court, upon any party's or the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before entry of the proposed Final Judgment by serving notice on the defendants and by filing that notice with the Court.

2. If plaintiff withdraws its consent or the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and its making shall be without prejudice to any party in this or any other proceeding.

Dated: March 14, 1994.

For the Plaintiff:

Anne K. Bingaman,

Assistant Attorney General.

Joseph H. Widmar,

Gail Kursh,

Attorneys, U.S. Department of Justice.

Edward D. Eliasberg, Jr.,

Karen L. Gable,

Jesse M. Caplan,

Kenneth M. Dintzer,

Attorneys, U.S. Department of Justice, 555 4th Street, NW., Washington, DC 20001, 202/307–0808.

Gail Kursh,

Attorneys, U.S. Department of Justice.

For the Defendants.

Brent D. Ward, Esq.,

Attorney for Utah Hospital Association.

Jesse M. Caplan,

Kenneth M. Dintzer,

Attorneys, U.S. Department of Justice, 555 4th Street NW., Washington, DC 20001, (202) 307–0808.

Final Judgment

Plaintiff, United States of America, having filed its Complaint on March 14, 1994, and plaintiff and defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or an admission by defendant to any such issue;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby

Ordered, adjudged and decreed, as follows:

I

Jurisdiction

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting to this Final Judgment. The Complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Sherman Act, 15 U.S.C. 1.

II

Applicability

This Final Judgment applies to the defendant and to each of its officers, directors, agents, employees, successors, and assigns, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

III

Definitions

As used in this Final Judgment: (A) "Actual pay rate" means the actual pay rate for any employee or class of employees in a specific job being evaluated.

(B) "Average pay rate" means the rate determined by calculating the average pay of all the employees in a specific job being evaluated.

(C) "Compensation" means any component of payment for employee services, including, but not limited to, wages, salaries, benefits, shift differentials, hourly and per diem rates, hiring formulas, payroll budget information, and the frequency or timing of changes in any of these components of payment.

(D) "Current compensation" means compensation that is actually being utilized in paying any employee.

(E) "Defendant" means Utah Hospital Association.

(F) "Employee" means any full-time, part-time, hourly or per diem employee or independent contractor.

(G) "Health care facility" means any entity employing nurses to provide health care services, including but not limited to, any hospital, hospital corporation, HMO facility, ambulatory care center, clinic, first-aid clinic, urgent care center, free standing emergency care center, ambulatory surgery center, nursing home, home health care, and nursing service.

(H) "Historic compensation" means compensation that was at one time, but that is no longer, utilized in paying any employee.

(I) "Nurse" means any registered or practical nurse, nurse practitioner, or nurse specialist.

(J) "Prospective compensation" means compensation that is planned or proposed to be utilized in paying any employee.

(K) "Utah" means within the State of Utah.

IV

Prohibited Conduct

(A) Defendant is prohibited from: (1) Conducting or facilitating any exchange or discussion by or between any health care facility employees of information concerning;

(a) the current or prospective compensation paid to nurses, or

(b) the historic compensation paid to nurses unless a written log or audio or audio/visual recording of such exchange or discussion is made; and

(2) communicating to, requesting from, or exchanging with any health care facility in Utah information concerning the compensation paid to nurses, except nothing in this subsection shall prohibit the exchange or discussion of historic compensation as provided in IV(A)(1).

(B) Nothing in this Final Judgment shall prohibit defendant from sponsoring, sanctioning, conducting, or publishing a survey of information concerning the compensation paid to nurses under the following conditions:

(1) any requests for information and any dissemination of information in connection with the survey is in writing;

(2) the survey is designed, developed, conducted, or published without involvement by any representative, agent, or employee of any health care facility in Utah, except that a representative, agent, or employee of any health care facility may provide written data in response to a written request for information in connection with the survey;

(3) the survey includes only historic or current compensation information, and does not request or disseminate prospective compensation information;

(4) the survey does not request actual pay rates when the only health care facilities that participated in the survey operate in Utah; the survey may request average pay rates;

(5) the survey only disseminates aggregate data, and either: (a) Each disseminated statistic is based on input from at least ten (10) separately owned and operated health care facilities; or

(b) no information about a compensation practice, including a wage increase, is provided within three months of the adoption of that practice; each disseminated statistic is based on input from at least five (5) separately owned and operated health care facilities; and any information disseminated in such a survey is sufficiently aggregated that recipients cannot identify the compensation paid by any survey participant;

(6) for each aggregated statistic, no individual separately owned and operated health care facility's data represents more than twenty-five (25) percent on a weighted basis of that statistic; and

(7) representatives, agents, or employees of any health care facility in Utah do not have access to any unaggregated data produced in response to any request for information in connection with the survey.

V

Compliance Program

Defendant is ordered to maintain an antitrust compliance program which shall include designating, within 30 days of entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for accomplishing the antitrust compliance program and with the purpose of achieving compliance with this Final Judgment. The Antitrust Compliance Officer shall, on a continuing basis, supervise the review of the current and proposed activities of the defendant institution to ensure that it complies with this Final Judgment. The Antitrust Compliance Officer shall:

(A) Distribute, within 60 days from the entry of this Final Judgment, a copy of this Final Judgment to all officers, directors, agents, and non-clerical employees of the defendant.

(B) Distribute in a timely manner a copy of this Final Judgment to any person who succeeds to a position described in Section V(A).

(C) Brief annually those persons designated in Section V(A) and defendant's general membership on the meaning and requirements of this Final Judgment and the antitrust laws and advise them that the defendant's legal advisors are available to confer with them concerning compliance with this Final Judgment and the antitrust laws.

(D) Obtain from each person then holding one of the positions designated in Section V(A) an annual written certification that he or she: (1) Has read, understands, and agrees to abide by the terms of this Final Judgment;

(2) has been advised and understands that his or her failure to comply with this Final Judgment may result in conviction for criminal contempt of court; and

(3) is not aware of any violation of this decree that he or she has not reported to the Antitrust Compliance Officer.

(E) Distribute, within 60 days from the entry of this Final Judgment, a copy of this Final Judgment to each health care facility that is a member of defendant.

(F) Distribute a copy of this Final Judgment to each health care facility joining defendant as a member within 60 days of that health care facility joining defendant.

(G) Maintain a record of recipients to whom this Final Judgment has been distributed and from whom the certifications were obtained, as required by Section V.

VI

Certification

(A) Within 75 days after the entry of this Final Judgment, defendant shall certify to the plaintiff whether it has distributed this Final Judgment and the notification in accordance with section V above.

(B) For each year of the term of this Final Judgment, defendant shall file with the plaintiff, on or before the anniversary date of entry of this Final Judgment, a statement as to the fact and manner of its compliance with the provisions of section V above.

(C) If defendant's Antitrust Compliance Officer learns of any violation of section IV of this Final Judgment, the defendant shall immediately notify the plaintiff and forthwith take appropriate action to determinate or modify the activity so as to comply with this Final Judgment.

VII

Inspection

(A) For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant be permitted: (1) Access during that defendant's office hours to inspect and copy all records and documents in its possession or control relating to any matters contained in this Final Judgment;

(2) to interview that defendant's officers, directors, employees and agents concerning such matters. The interviews shall be subject to the defendant's reasonable convenience and without restraint or interference from the defendant. Counsel for the defendant or counsel for the individual interviewed may be present at the interview.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, defendant shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

(C) No information or documents obtained by the means provided in this

section VII shall be divulged by the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VIII

Term

This Final Judgment shall expire five (5) years from the date of entry.

IX

Power to Modify

Jurisdiction is retained by this Court to enable any of the parties to apply to this Court at any time for such further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

X

Public Interest

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties to this Stipulation consent that Final Judgment in the form attached may be filed and entered by the Court, upon any party's or the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before entry of the proposed Final Judgment by serving notice on the defendants and by filing that notice with the Court.

2. If plaintiff withdraws its consent or the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and its making shall be without prejudice to any party in this or any other proceeding.

Dated: March 14, 1994.

For the Plaintiff.

Anne K. Bingaman,

Assistant Attorney General.

Joseph H. Widmar,

Gail Kursh,

Attorneys, U.S. Department of Justice.

Edward D. Eliasberg, Jr.,

Karen L. Gable,

Jesse M. Caplan,

Kenneth M. Dintzer,

Attorneys, U.S. Department of Justice, 555 4th Street NW., Washington, DC 20001, 202/307-0808.

For the Defendants:

Counsel for Pioneer Valley Hospital, Inc.; Mountain View Hospital, Inc.; Lakeview Hospital, Inc.; and Brigham City Community Hospital, Inc.

Counsel for HCA Health Services of Utah d/b/a St. Marks's Hospital.

David L. Jones,

President, for Holy Cross Hospital of Salt Lake City; and St. Benedict's Hospital.

For the Defendants.

Robert D. Paul,

Shaw, Pittman, Potts & Trowbridge.

Richard W. Casey,

Giauque, Crockett, Bendinger & Peterson Counsel for IHC Hospitals, Inc.

For the Defendants.

Robert C. Jones,

Counsel for Pioneer Valley Hospital, Inc.; Lakeview Hospital, Inc.; Mountain View Hospital, Inc.; and Brigham City Community Hospital, Inc.

For the Defendants.

Greg Tucker,

Counsel for HCA Health Services of Utah, Inc. d/b/a St. Mark's Hospital.

Final Judgment

Plaintiff, United States of America, having filed its Complaint on March 14, 1994, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or an admission by defendants to any such issue;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby

Ordered, adjudged and decreed, as follows:

I

Jurisdiction

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting to this Final Judgment. The Complaint states a claim upon which relief may be granted against the defendants under Section 1 of the Sherman Act, 15 U.S.C. 1. Jurisdiction is retained by this Court to enable any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

II

Applicability

This Final Judgment applies to each defendant and to each of its trustees, officers, directors, agents, employees, successors, and assigns, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise except that: (A) The provisions of Section IV (A)(1)–(3) do not apply to the communications of a nurse employee of any hospital defendant that are exclusively for the purpose of, and are ancillary to, and reasonably necessary for, the seeking or holding of individual employment as a nurse, and

(B) For HCA Health Services of Utah, Inc. d/b/a St. Mark's Hospital, the provisions of Sections V, VI, and VII apply only to defendant HCA Health Services of Utah, Inc. d/b/a St. Mark's Hospital and to any party who may succeed to the ownership of St. Mark's Hospital.

III

Definitions

As used in this Final Judgment: (A) "Actual pay rate" means the actual pay rate for any employee or class of employees in a specific job being evaluated.

(B) "Average pay rate" means the rate determined by calculating the average pay of all the employees in a specific job being evaluated.

(C) "Compensation" means any component of payment for employee services, including, but not limited to, wages, salaries, benefits, shift differentials, hourly and per diem rates, hiring formulas, payroll budget information, and the frequency or timing of any of these components of payment.

(D) "Current compensation" means compensation that is actually being utilized in paying any employee.

(E) "Defendants" means St. Benedict's Hospital; IHC Hospitals, Inc., and IHC Hospitals, Inc. d/b/a LDS Hospital,

Primary Children's Medical Center, Cottonwood Hospital Medical Center, Alta View Hospital, and Wasatch Canyons Hospital ("IHC"); Holy Cross Hospital of Salt Lake City; Pioneer Valley Hospital, Inc. d/b/a Pioneer Valley Hospital; Lakeview Hospital, Inc. d/b/a Lakeview Hospital; Mountain View Hospital, Inc. d/b/a Mountain View Hospital; Brigham City Community Hospital, Inc. d/b/a Brigham City Community Hospital; and HCA Health Services of Utah, Inc. d/b/a St. Marks Hospital.

(F) "Employee" means any full-time, part-time, hourly or per diem employee.

(G) "Health care facility" means any entity employing nurses to provide health care services, except that, for each defendant, the term does not include its own parent corporation and any entity owned or controlled, by means of corporate membership or otherwise, either directly or indirectly by the defendant or its parent.

(H) "Historic compensation" means compensation that was at one time, but that is no longer, utilized in paying any employee.

(I) "Hospital defendant" means any defendant employing nurses to provide health care services.

(J) "Joint venture" means a joint arrangement in which two or more health care facilities pool their resources to finance a venture and substantially share in the risk of adverse financial results.

(K) "Nurse" means any registered or practical nurse, nurse practitioner, or nurse specialist, whether an employee or independent contractor.

(L) "Prospective compensation" means compensation that a defendant or health care facility plans or proposes to pay any employee.

(M) "Utah" means within the State of Utah.

IV

Prohibited Conduct

(A) Except as provided for by Section IV(B) and (C), each hospital defendant is prohibited from: (1) agreeing with any other health care facility in Utah to fix, limit, or maintain the compensation paid to nurses;

(2) agreeing with any other health care facility in Utah to communicate or exchange information concerning the current or prospective compensation paid to nurses; or

(3) communicating to, requesting from, or exchanging with any other health care facility in Utah or third party, other than one owned directly or indirectly by the hospital defendant or its parent, information concerning the current or prospective compensation paid to nurses.

(B) Nothing in this Final Judgment shall prohibit any hospital defendant from: (1) Communicating its own historic or current compensation information exclusively for the purpose of recruiting nurses for employment;

(2) communicating its own prospective compensation information to an individual nurse in connection with an offer or discussion of employment;

(3) providing or receiving historic or current compensation information to or from a third party, other than a health care facility in Utah, in response to a compensation survey conducted in accordance with the conditions detailed in either (a) or (b) below: (a) Any requests for information and any dissemination of information in connection with the survey are in writing, and: (i) The survey is conducted and published without involvement by any representative, agent, independent contractor, or employee of any hospital defendant or any health care facility in Utah, except that a representative, agent, or employee of any hospital defendant or any health care facility may communicate individually and separately with the third party responsible for conducting and publishing the survey concerning the design and development of the survey, and may provide written data in response to a written request for information in connection with the survey;

(ii) the survey includes only historic or current compensation information, and does not request or disseminate prospective compensation information;

(iii) the survey does not request or disseminate actual pay rates when the only health care facilities that participated in the survey operate in Utah. The survey, however, may request and disseminate average pay rates;

(iv) the survey disseminates only aggregate data, and either: (iv.a) Each disseminated statistic is based on data from at least ten (10) separately owned and operated health care facilities; or

(iv.b) no information about a compensation practice, including a wage increase, is provided by a survey participant within three months of the adoption of that practice; each disseminated statistic is based on data from at least five (5) separately owned and operated health care facilities; and any information disseminated in such a survey is sufficiently aggregated that recipients cannot identify the compensation paid by any survey participant;

(v) no individual separately owned and operated health care facility's data represent more than twenty-five (25) percent on a weighted basis of each aggregated statistic; and

(vi) representatives, agents, independent contractors, or employees of any hospital defendant or any health care facility in Utah do not have access to any unaggregated data produced in response to any request for information in connection with the survey; or

(b) any compensation information is provided in writing, and the defendant hospital has received written assurance that the survey will be conducted in accordance with the conditions detailed below: (i) The survey disseminates aggregate data only, from a sufficiently large number of participants that data cannot be identified with any particular health care facility or health care facility chain;

(ii) representatives, agents, or employees of any health care facility in Utah (excluding the third party conducting the survey) do not have access to any unaggregated data produced in response to any request for information in connection with the survey; and

(iii) if a majority of the health care facilities that participated in the survey operate or are headquartered in Utah, the survey may not identify the facilities that participated in the survey, may not disseminate entry level rates for a particular position, and may only disseminate the average pay rate for that position;

(4) communicating any compensation information to a person, except as described and limited in Section IV(B)(1)–(3), *provided* that: (a) No information is directly or indirectly conveyed to the Utah Hospital Association, the Utah Society for Healthcare Human Resources Administration, or to any health care facility in Utah;

(b) the defendant advises the person of the existence of this Final Judgment;

(c) the hospital defendant requires, if within its power, or requests if not, that any current or prospective compensation information provided not be communicated to another health care facility in Utah; and

(d) except when subject to subpoena or other legal compulsion, the information is not provided for the purpose of analyzing or setting any compensation practice for any party except the hospital defendant providing the information; or

(5) participating in a joint venture to provide health care services and engaging in conduct, including setting the salaries of nurses of the joint

venture, that is ancillary to, and reasonably necessary to achieve the benefits of, the joint venture, *provided* that the joint venture is not formed for the primary purpose of purchasing nursing services.

(C) Nothing in this Final Judgment shall prohibit incidental and nonsystematic communication between nurses in the employ of hospital defendants, provided these communications are not performed at the request, direction, suggestion, or order of a head nurse or any person listed in V(A), and the nurse has no role in setting nurse compensation.

V

Compliance Program

Each defendant is ordered to maintain an antitrust compliance program which shall include designating, within 30 days of entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for accomplishing the antitrust compliance program and with the purposes of achieving compliance with this Final Judgment. Each Antitrust Compliance Officer shall, on a continuing basis, supervise the review of the current and proposed activities of his or her defendant institution to ensure that it complies with the Final Judgment. Each defendant's Antitrust Compliance Officer shall:

(A) Distribute, within 60 days from the entry of this Final Judgment, a copy of this Final Judgment to all trustees, officers, directors, administrators, assistant administrators, chief financial officers, non-clerical human resources and compensation staff, directors of nursing, and nurse recruiters of his or her defendant institution, except, for IHC this subsection applies to all trustees, officers, and non-clerical human resources and compensation staff at the Central Office of IHC Hospitals, Inc. and the administrators, assistant administrators, chief financial officers, non-clerical human resources and compensation staff, directors of nursing, and nurse recruiters of the defendant IHC hospitals in Salt Lake County.

(B) Distribute in a timely manner a copy of this Final Judgment to any person who succeeds to a position described in Section V(A).

(C) Brief annually those persons then holding the positions designated in Section V(A) on the meaning and requirements of this Final Judgment and the antitrust laws and advise them that the defendant's legal advisors are available to confer with them concerning compliance with the Final Judgment and the antitrust laws.

(D) Obtain from each person then holding one of the positions designated in Section V(A) an annual written certification that he or she: (1) Has read, understands, and agrees to abide by the terms of this Final Judgment;

(2) has been advised and understands that his or her failure to comply with this Final Judgment may result in conviction for criminal contempt of court; and

(3) is not aware of any violation of this decree that he or she has not reported to the Antitrust Compliance Officer.

(E) Maintain a record of recipients to whom the Final Judgment has been distributed and from whom the certifications obtained, as required by Section V(D).

VI

Certification

(A) Within 75 days after the entry of this Final Judgment, each defendant shall certify to the plaintiff whether it has distributed this Final Judgment and the notification in accordance with Section V above.

(B) For each year of the term of this Final Judgment, each defendant shall file with the plaintiff, on or before the anniversary date of entry of this Final Judgment, a statement as to the fact and manner of its compliance with the provisions of Section V above.

(C) If at any time a defendant's Antitrust Compliance Officer learns of any violation of Section IV of this Final Judgment, that defendant shall immediately notify the plaintiff and forthwith take appropriate action to terminate or modify the activity so as to comply with this Final Judgment.

VII

Inspection

(A) To determine or secure compliance with this Final Judgment, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant, be permitted: (1) Access during that defendant's administrative office hours to inspect and copy all records and documents in its possession or control relating to any matters contained in this Final Judgment; and

(2) to interview that defendant's trustees, officers, employees, and agents concerning such matters. The interviews shall be subject to the defendant's and individual's reasonable convenience and without restraint or interference from the defendant. Counsel for the defendant or counsel for the individual interviewed may be present at the interview.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, a defendant shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be reasonably requested, provided that the preparation of such report will not unduly burden the defendant or disrupt defendant's operations.

(C) No information or documents obtained by the means provided in this Section VII shall be divulged by the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VIII

Term

This Final Judgment shall expire five (5) years from the date of entry.

IX

Opportunity to Modify

(A) If, subsequent to the entry of this Final Judgment, a stipulated final judgment in this matter incorporating different items is filed with respect to another hospital defendant, or if this Final Judgment or a subsequently filed stipulated final judgment with respect to a hospital defendant in this matter is modified to include different terms, any hospital defendant, in its sole discretion, may move this Court to substitute such different terms.

(B) Any hospital defendant may move the Court to apply this Final Judgment in lieu of any other stipulated final judgment in this matter, for any other hospital that hospital defendant, or its parent, acquires. In addition, any hospital defendant shall move this Court to apply this Final Judgment to any other hospital that it or its parent acquires against which a complaint in this matter is outstanding, in full settlement of the pending litigation. Either Motion must be made within thirty (30) days of the acquisition.

(C) The plaintiff will support any motion made in accordance with this Section.

X

Public Interest

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties to this Stipulation consent that a Final Judgment in the form attached may be filed and entered by the Court, upon any party's or the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before entry of the proposed Final Judgment by serving notice on the defendants and by filing that notice with the Court.

2. If plaintiff withdraws its consent or the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and its making shall be without prejudice to any party in this or any other proceeding.

Dated: March 14, 1994.

For the Plaintiff.

Anne K. Bingaman,

Assistant Attorney General.

Joseph H. Widmar,

Gail Kursh,

Attorneys, U.S. Department of Justice.

Edward D. Eliasberg, Jr.

Karen L. Gable,

Jesse M. Caplan,

Kenneth M. Dintzer,

Attorneys, U.S. Department of Justice, 555 4th Street, NW., Washington, DC 20001, 202/307–0808.

For the Defendants.

Jay Gurmankin,

Counsel for Utah Society For Healthcare Human Resources Administration.

Final Judgment

Plaintiff, United States of America, having filed its Complaint on March 14, 1994, and plaintiff and defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or an admission by defendant to any such issue;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby

Ordered, adjudged and decreed, as follows:

I

Jurisdiction

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting to this Final Judgment. The Complaint states a claim upon which relief may be granted against the defendant under section 1 of the Sherman Act, 15 U.S.C. 1.

II

Applicability

This Final Judgment applies to the defendant and to each of its officers, directors, agents, employees, successors, and assigns, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

III

Definitions

As used in this Final Judgment: (A) "Compensation" means any component of payment for employee services, including, but not limited to, wages, salaries, benefits, shift differentials, hourly and per diem rates, hiring formulas, payroll budget information, and the frequency or timing of changes in any of these components of payment.

(B) "Current compensation" means compensation that a defendant or health care facility currently pays to employees.

(C) "Defendant" means Utah Society for Healthcare Human Resources Administration.

(D) "Employee" means any full-time, part-time, hourly, or per diem employee.

(E) "Health care facility" means any entity employing nurses to provide healthcare services.

(F) "Historic compensation" means compensation that a defendant or health care facility no longer pays to employees.

(G) "Nurse" means any registered or practical nurse, nurse practitioner, or nurse specialist, whether an employee or independent contractor.

(H) "Person" means any natural person, corporation, firm, company, association or other business, legal, or government entity.

(I) "Prospective compensation" means compensation that a defendant or health care facility plans or proposes to pay employees.

IV

Prohibited Conduct

Defendant is prohibited from: (A) Conducting or facilitating any exchange or discussion by or between any health care facility employees of information concerning: (1) the current or prospective compensation paid to nurses, or

(2) the historic compensation paid to nurses unless a written log or audio or audio/visual recording of such exchange or discussion is made; and

(b) communicating to, requesting from, or exchanging with any health care facility in Utah information the compensation paid to nurses, except nothing in this subsection shall prohibit the exchange or discussion of historic compensation as provided in IV(A)(2).

V

Compliance Program

Defendant is ordered to maintain an antitrust compliance program which shall include designating, within 30 days of entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for accomplishing the antitrust compliance program and with the purpose of achieving compliance with this Final Judgment. The Antitrust Compliance Officer shall, on a continuing basis, supervise the review of the current and proposed activities of the defendant to ensure that it complies with the Final Judgment. The Antitrust Compliance Officer shall: (A) Distribute within 60 days from the entry of this Final Judgment, a copy of this Final Judgment to each member of defendant;

(B) Distribute a copy of this Final Judgment to each person joining defendant as a member within 60 days of that person joining defendant;

(C) Hold an annual briefing of defendant's general membership on the meaning and requirements of this Final Judgment and the antitrust laws;

(D) Obtain from each of defendant's officers an annual written certification that he or she: (1) Has read, understands, and agrees to abide by the terms of this Final Judgment;

(2) has been advised and understands that his or her failure to comply with this Final Judgment may result in conviction for criminal contempt of court; and

(3) is not aware of any violation of this decree that he or she has not reported to the Antitrust Compliance Officer; and

(E) Maintain a record of recipients to whom the Final Judgment has been distributed and from whom the certifications were obtained as required by Section V.

VI

Certification

(A) Within 75 days after the entry of this Final Judgment, defendant shall

certify to the plaintiff whether it has distributed this Final Judgment and the notification in accordance with Section V above.

(B) For each year of the term of this Final Judgment, defendant shall file with the plaintiff, on or before the anniversary date of entry of this Final Judgment, a statement as to the fact and manner of its compliance with the provisions of Section V above.

(C) If defendant's Antitrust Compliance Officer learns of any violation of Sections IV of this Final Judgment, defendant shall immediately notify the plaintiff and forthwith take appropriate action to terminate or modify the activity so as to comply with this Final Judgment.

VII

Inspection

(A) For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant be permitted: (1) Access during regular business office hours to inspect and copy all records and documents in its possession or control relating to any matters contained in this Final Judgment; and

(2) to interview defendant's officers, members, employees, and agents concerning such matters. The interviews shall be subject to the defendant's reasonable convenience and without restraint or interference from the defendant. Counsel for the defendant or counsel for the individual interviewed may be present at the interview.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, defendant shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

(C) No information or documents obtained by the means provided in this Section VII shall be divulged by the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VIII

Term

This Final Judgment shall expire five (5) years from the date of entry.

IX

Power To Modify

Jurisdiction is retained by this Court to enable any of the parties to apply to this Court at any time for such further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

X

Public Interest

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge

Competitive Impact Statement

Pursuant to section 2(b) of the Antitrust Procedures and Penalties, Act, 15 U.S.C. 16(b)–(h), the United States submits this Competitive Impact Statement relating to the three proposed Final Judgments submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On March 14, 1994, the United States filed a civil antitrust Complaint alleging that the defendants and co-conspirators unreasonably conspired to restrain wage competition among themselves in violation of section 1 of the Sherman Act, 15 U.S.C. 1.

The Complaint alleges that, from at least as early as January, 1984 and continuing through June, 1992, the defendants and co-conspirators conspired to exchange current and prospective, nonpublic registered-nurse entry wage information with the purpose and effect of restraining wage competition for registered nursing services in Salt Lake County, Utah.

The conspiracy was effectuated through telephone calls and written surveys between the hospital defendants and co-conspirators, and through meetings of the Utah Society for Healthcare Human Resources Administration ("USHHRA") and the Utah Hospital Association ("UHA"), both of which consist of human resource directors from the hospital defendants. The hospital defendants agreed to exchange prospective and current compensation information. The conspiracy had the effect of depriving registered nurses in Salt Lake County and elsewhere in Utah of the benefits of free and open competition in the purchase of registered nursing services. In addition, the conspiracy resulted in smaller annual increases in the registered-nurse entry wage than the hospital defendants would have paid absent the conspiracy.

The Complaint seeks to prevent the defendants from continuing or renewing the alleged conspiracy, or from engaging in any other conspiracy, or adopting any practice having a similar purpose of effect for a period of 5 years.

The defendants will be required to file annual reports with the Court and the Government certifying that they have complied with the terms of section V of their respective Final Judgments.

Entry of the proposed Final Judgments will terminate the action against all the defendants, except that the Court will retain jurisdiction over the matter for further proceedings that may be required to interpret, enforce, or modify the Judgment, or to punish violations of any of its provisions.

II

Description of the Practices Involved in the Alleged Violations

At trial, the Government would have made the following contentions: 1. The hospital defendants, St. Benedict's Hospital, IHC Hospitals, Inc. ("IHC"), Holy Cross Hospital of Salt Lake City, Pioneer Valley Hospital, Inc., Lakeview Hospital, Inc., Mountain View Hospital, Inc., Brigham City Community Hospital, Inc., and HCA Health Services of Utah, Inc. d/b/a St. Mark's Hospital, provide and sell general acute-care hospital services and recruit and hire nurses. The hospital defendants located in Salt Lake County compete with each other in recruiting and hiring nurses and purchase approximately 75% of the registered nursing services in that County.

2. On a regular basis, the hospital defendants telephoned one another and exchanged nonpublic prospective and current wage and budget information for nurses. On a number of occasions, hospital defendants told each other, including IHC, of their intent to match whatever registered-nurse entry wage IHC eventually adopted.

3. On at least eight occasions between 1984 and 1992, some or all of the hospital defendants attended meetings organized by USHHRA for the express purpose of exchanging nonpublic prospective and current wage and budget information about registered nursing wages.

4. Annually, IHC collected current and nonpublic prospective wage and budget information from the other hospital defendants for use in a published wage survey that was distributed to the other hospitals. IHC used this information to limit its registered-nurse wage increases.

5. Annually, the UHA collected current and, in some years, prospective information pursuant to a survey designed by the hospital defendants. This information was published and distributed to the hospital defendants, which use this information to limit registered-nurse wage increases.

6. As a direct result of these wage and budget exchanges, the hospital defendant's registered-nurse entry wages in Salt Lake County and elsewhere in Utah were kept artificially low, and registered nurses were paid these lower wages from 1984 through June, 1992.

III

Explanation of the Proposed Final Judgments

The United States and the defendants have stipulated that the Court may enter the proposed Final Judgments after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)–(h). Under the provisions of section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(e), the proposed Final Judgments may not be entered unless the Court finds that entry is in the public interest. Section X of each of the three proposed Final Judgments sets forth such a finding.

The proposed Final Judgments are intended to ensure that the hospital defendants reach independent decisions about the wages they pay registered nurses by prohibiting agreements, discussions, or other communications among competing hospitals of current and prospective registered nursing wages, and to ensure that USHHRA and the UHA are not used as forums or means for hospitals to exchange nonpublic prospective and current wage and budget information about registered nursing wages.

A. Prohibitions and Obligations

The Hospital Defendants' Final Judgment enjoins the hospital defendants from entering into any agreement with any other health care facility to fix nursing wages. It also prohibits them from discussing with any health care facility in Utah or with any third party, prospective or current budget or nursing wage information, or the timing of wage increases, except in very limited circumstances when the communications are solely for the purpose of recruiting or hiring a nurse.

The Hospital Defendants' Final Judgment further prohibits the hospital defendants from developing, supervising, or participating in a salary survey asking for current or prospective wage information concerning nurses or in which the wage information is presented in a manner that would allow participants to determine what another health care facility in Utah is, has been, or will be paying its nurses.

The Hospital Defendants' Final Judgment obligates each hospital defendant to file with plaintiff, on or before each anniversary date of the Final Judgment, a statement that the defendant has complied with the terms of the Final Judgment and has had no communications of the type prohibited under the Final Judgment.

The Hospital Defendants' Final Judgment also provides that an authorized representative of the Department of Justice may visit the defendants' offices, after providing reasonable notice, to review their records and to conduct interviews regarding any matters contained in the Final Judgment. The defendants may also be required to submit written reports, under oath, pertaining to the Final Judgment.

The USHHRA Final Judgment prohibits USHHRA from conducting or facilitating any exchange or discussion by or between any health care facility employees of information concerning the current or prospective compensation paid to nurses. It also prohibits USHHRA from conducting or facilitating any exchange or discussion of information concerning compensation previously paid to nurses unless a written log or audio or audio/visual recording of such exchange or discussion is made.

The UHA Final Judgment prohibits the UHA from sponsoring or facilitating any exchange or discussion by or between any health care facilities of information concerning the compensation paid to nurses. The UHA Final Judgment does not, however, prohibit the UHA from sponsoring or publishing a survey of information concerning the compensation paid to nurses if, among other things: (1) Any request for and dissemination of information is in writing, (2) the survey includes only historic or current compensation information and does not request or disseminate prospective compensation information, (3) the survey only disseminates aggregate data that is presented in a manner that would not allow participants to determine what another health care facility in Utah is, has been, or will be paying its nurses, and (4) health care facilities in Utah do not have access to unaggregated data produced in response to the survey.

The USHHRA and UHA Final Judgments have reporting and visitation provisions similar to the Hospital Defendants' Final Judgment.

B. Scope of the Proposed Final Judgments

The Hospital Defendants' Final Judgment applies to the hospital defendants, as well as to each of their trustees, officers, directors, agents, employees, successors, and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of the Final Judgment by personal service or otherwise. Moreover, pursuant to the terms of the Final Judgment, any person who becomes a trustee, officer, director, administrator, chief financial officer, non-clerical human resources and compensation staff member, director of nursing, or nurse recruiter within 5 years after the entry of the Final Judgment shall be furnished a copy of the Final Judgment.

The USHHRA and UHA Final Judgments have applicability and notification provisions similar to those of the Hospital Defendants' Final Judgment.

C. Effect of the Proposed Final Judgments on Competition

The relief in the proposed Final Judgments is designed to ensure that hospitals in Salt Lake County establish their registered-nurse wages independently and that registered nurses receive competitive wages. Specifically, the injunction against exchanges of current and prospective wages and budget information and the reporting requirements of Section IV and Section VI of the Hospital Defendants' Final Judgment are designed to eliminate restraints on wage competition among hospitals in Salt Lake County. The injunction against conducting or facilitating the exchange of information concerning the compensation paid to nurses and the reporting requirements of Sections IV and VI of both the USHHRA and UHA Final Judgments are designed to preclude those organizations from being forums or means for hospitals to exchange nonpublic prospective and current wage and budget information about registered nursing wages.

The Department of Justice believes that these proposed Final Judgments contain adequate provisions to prevent further violations of the type described

in the Complaint and to remedy the effects of the alleged conspiracy.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgments will neither impair nor assist the bringing of such actions. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the Judgments have no *prima facie* effect in any subsequent lawsuits that may be brought against the defendants in this matter.

V

Procedures Available for Modification of the Proposed Judgments

As provided by the Antitrust Procedures and Penalties Act, any person beliving that the proposed Final Judgments should be modified may submit written comments to Gail Kursh, Chief, Professions and Intellectual Property Section, U.S. Department of Justice, Antitrust Division, 555 4th Street, NW., room 9903, Washington, DC 20001, within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the Court and published in the **Federal Register**. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed judgment at any time prior to entry. Section I of each of the proposed Final Judgments provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for modification, interpretation, or enforcement of the Final Judgments.

VI

Alternative to the Proposed Final Judgments

The alternative to the proposed Final Judgments would be a full trial of the case against the defendants. The Department of Justice believes that such a trial would involve substantial cost to the United States and is not warranted since the proposed Final Judgments provide the relief that the United States seeks in its Complaint.

VII

Determinative Materials and Documents

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b), were considered in formulating the proposed Final Judgments.

Dated:

Respectfully submitted,

Edward D. Eliasberg, Jr.

Karen L. Gable

Jesse M. Caplan

Kenneth M. Dintzer

Attorney, U.S. Department of Justice, 555 4th Street, NW., Washington, DC 20001, 202/307-0808.

Certificate of Mailing

I hereby certify that a true and correct copy of the foregoing Competitive Impact Statement was sent by regular mail on this 14th day of March, 1994, to:

Jay D. Gurmankin, 1010 Boston Building, #9 Exchange Place, Salt Lake City, Utah 84111.

Richard W. Casey, Giauque, Crockett, & Bendinger, 500 Kearns Building, Salt Lake City, Utah 84101.

Robert D. Paul, Thomas C. Hill, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

Gordon B. Nash, Jr., Gardner, Carton & Douglas, suite 3400—Quaker Tower, 321 N. Clark Street, Chicago, IL 60610–3381.

Phillip Proger, Robert Jones, Jones, Day, Reavis & Pogue, 1450 G Street, NW., Washington, DC 20005–2088.

Greg Tucker, 1 Park Plaza, Nashville, TN 37203.

Brent Ward, Parry, Murray, Ward & Cannon, 1270 Eagle Gate Tower, Salt Lake City, Utah 84111.

Karen L. Gable,

Attorney, Antitrust Division.

[FR Doc. 94–6987 Filed 3–24–94; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by

contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour division, Division of Wage Determinations, 200 Constitution Avenue NW., room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume III

Alabama
AL940030 (Mar. 25, 1994)
AL940034 (Mar. 25, 1994)
AL940035 (Mar. 25, 1994)
AL940036 (Mar. 25, 1994)
AL940038 (Mar. 25, 1994)
AL940039 (Mar. 25, 1994)
AL940040 (Mar. 25, 1994)
AL940041 (Mar. 25, 1994)
AL940042 (Mar. 25, 1994)
AL940043 (Mar. 25, 1994)
AL940044 (Mar. 25, 1994)
AL940045 (Mar. 25, 1994)
AL940046 (Mar. 25, 1994)
AL940047 (Mar. 25, 1994)
AL940048 (Mar. 25, 1994)
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AL940050 (Mar. 25, 1994)
AL940051 (Mar. 25, 1994)
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AL940053 (Mar. 25, 1994)
AL940054 (Mar. 25, 1994)
AL940055 (Mar. 25, 1994)
North Carolina
NC940037 (Mar. 25, 1994)
NC940038 (Mar. 25, 1994)
NC940039 (Mar. 25, 1994)
NC940040 (Mar. 25, 1994)
NC940041 (Mar. 25, 1994)
NC940042 (Mar. 25, 1994)
NC940043 (Mar. 25, 1994)
NC940044 (Mar. 25, 1994)
NC940045 (Mar. 25, 1994)
NC940046 (Mar. 25, 1994)
NC940047 (Mar. 25, 1994)
NC940048 (Mar. 25, 1994)
NC940049 (Mar. 25, 1994)

Volume IV

Minnesota
MN940017 (Mar. 25, 1994)
MN940018 (Mar. 25, 1994)
MN940019 (Mar. 25, 1994)
MN940020 (Mar. 25, 1994)
MN940021 (Mar. 25, 1994)
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MN940042 (Mar. 25, 1994)
MN940043 (Mar. 25, 1994)
MN940044 (Mar. 25, 1994)
MN940045 (Mar. 25, 1994)
MN940046 (Mar. 25, 1994)

Volume V

Arkansas
AR940044 (Mar. 25, 1994)
Kansas
KS940062 (Mar. 25, 1994)
KS940063 (Mar. 25, 1994)
KS940064 (Mar. 25, 1994)
Texas
TX940106 (Mar. 25, 1994)
TX940107 (Mar. 25, 1994)
TX940108 (Mar. 25, 1994)
TX940109 (Mar. 25, 1994)
TX940110 (Mar. 25, 1994)

Volume VI

Montana
MT940021 (Mar. 25, 1994)
MT940022 (Mar. 25, 1994)
MT940023 (Mar. 25, 1994)
MT940024 (Mar. 25, 1994)
MT940025 (Mar. 25, 1994)
MT940026 (Mar. 25, 1994)
MT940027 (Mar. 25, 1994)
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MT940040 (Mar. 25, 1994)
MT940041 (Mar. 25, 1994)
MT940042 (Mar. 25, 1994)
MT940043 (Mar. 25, 1994)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

None

Volume II

Pennsylvania
PA940023
West Virginia
WV940002

Volume III

Alabama
AL940007 (Feb. 11, 1994)
AL940008 (Feb. 11, 1994)
AL940010 (Feb. 11, 1994)
AL940015 (Feb. 11, 1994)
AL940019 (Feb. 11, 1994)
AL940024 (Feb. 11, 1994)
AL940028 (Feb. 11, 1994)
AL940033 (Feb. 11, 1994)
Florida
FL940017 (Feb. 11, 1994)
Georgia
GA940079 (Feb. 11, 1994)

Volume IV

Indiana
IN940019 (Feb. 11, 1994)
Ohio
OH940002 (Feb. 11, 1994)
OH940029 (Feb. 11, 1994)
Wisconsin
WI940052 (Feb. 11, 1994)
WI940065 (Feb. 11, 1994)

Volume V

Arkansas
AR940003 (Feb. 11, 1994)
Iowa
IA940029 (Feb. 11, 1994)
Kansas
KS940005 (Feb. 11, 1994)
KS940006 (Feb. 11, 1994)
KS940008 (Feb. 11, 1994)
KS940009 (Feb. 11, 1994)
KS940012 (Feb. 11, 1994)
KS940016 (Feb. 11, 1994)
KS940018 (Feb. 11, 1994)
KS940019 (Feb. 11, 1994)
KS940020 (Feb. 11, 1994)
KS940021 (Feb. 11, 1994)
KS940022 (Feb. 11, 1994)
KS940023 (Feb. 11, 1994)
KS940025 (Feb. 11, 1994)
KS940026 (Feb. 11, 1994)
Missouri
MO940013 (Feb. 11, 1994)

Volume VI

Alaska
AK940001 (Feb. 11, 1994)
Arizona
AZ940017 (Feb. 11, 1994)
Utah
UT940007 (Feb. 11, 1994)
Washington
WA940002 (Feb. 11, 1994)
WA940007 (Feb. 11, 1994)
WA940008 (Feb. 11, 1994)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage

Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 18th day of March 1994.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 94–6809 Filed 3–24–94; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than April 4, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than (April 4, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 14th day of March 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Louisiana-Pacific Corp. (AWPPW)	Samoa, CA	03/14/94	03/04/94	29,587	Bleached Pulp.
Cooper Industries (Wkrs)	Canonsburg, PA	03/14/94	03/01/94	29,588	Power Transformers.
WordPerfect Corp. (Wkrs)	Orem, UT	03/14/94	03/02/94	29,589	Computer Software.
Oahu Sugar Co. (ILWU)	Waipahu, HI	03/14/94	03/01/94	29,590	Cane Sugar.
Movie Star No. 2 (Wkrs)	Poplarville, MS	03/14/94	03/03/94	29,591	Ladies' Lounge Wear.
Valdese Textiles, Inc. (Wkrs)	New York, NY	03/14/94	02/02/94	29,592	Fabric Sales.
General Electric, Spec. Component (IUE).	Seattle, WA	03/14/94	02/21/94	29,593	Jet Engine Components.
Genesco, Inc. (Co)	Fulton, MS	03/14/94	03/01/94	29,594	Men's Shoes.
Genesco, Inc. (Co)	Luka, MS	03/14/94	03/01/94	29,595	Men's Shoes.
Gensco, Inc. (Co)	Hohenwald, TN	03/14/94	03/01/94	29,596	Men's Shoes.
Genesco, Inc., J & M Plant (Co)	Nashville TN	03/14/94	03/01/94	29,597	Men's Shoes.
Genesco Inc., Warehouse 63 (Co)	Nashville, TN	03/14/94	03/01/94	29,598	Men's Shoes.
Genesco, Inc. (Co)	Waynesboro, TN	03/14/94	03/01/94	29,599	Men's Shoes.
Genesco, Inc. (Co)	Fayetteville, TN	03/14/94	03/01/94	29,600	Men's Shoes.
Genesco, Inc. (Co)	Chapel Hill, TN	03/14/94	03/01/94	29,601	Men's Shoes.
Genesco, Inc., Genstar (Co)	Nashville, TN	03/14/94	03/01/94	29,602	Men's Shoes.
Hughes Christensen (Co)	Houston, TX	03/14/94	01/11/94	29,603	Oil Exploration & Drilling.
Durango Apparel, Inc. (Wkrs)	El Paso, TX	03/14/94	02/24/94	29,604	Ladies' Pants, Shorts and Skirts.
enClean, Inc. (Wkrs)	Odessa, TX	03/14/94	03/01/94	29,605	Environmental Clean-Up Work.
Ohio Coil Service (IUE)	Newcomerstown, OH	03/14/94	03/01/94	29,606	Hydroelectric Coils.
Koch Industries, Inc. (Wkrs)	Roosevelt, UT	03/14/94	01/14/94	29,607	Oil and Gas Transportation Services.
Koch Industries, Inc. (Wkrs)	Russell, KS	03/14/94	02/26/94	29,608	Oil and Gas Pipeline.
Lucas Aerospace, Applied Tech Div. (Wkrs).	City of Industry, CA	03/14/94	02/24/94	29,609	Aircraft Parts.
Mary Nell Industries (Wkrs)	Mayfield, KY	03/14/94	02/21/94	29,610	Mens and Boys Denim Jeans.
Natalie Fashions (ILGWU)	Palmerton, PA	03/14/94	03/02/94	29,611	Blouses.
P.B. Apparel, Inc. (ILGWU)	Poplar Bluff, MO	03/14/94	02/21/94	29,612	Lingerie.
Tretolite Oilfield Chemicals (Wkrs)	Midland, TX	03/14/94	03/04/94	29,613	Marketing Chemicals.
Honeywell, Inc. (Wkrs)	Golden Valley, MN	03/14/94	02/28/94	29,614	HVAC Controlls.
Honeywell, Inc. (Wkrs)	Plymouth, MN	03/14/94	02/28/94	29,615	HVAC Controlls.
Denise Barry Fashions, Inc. (ILGWU).	Nazareth, PA	03/14/94	03/01/94	29,616	Ladies' Blouses, Vests, Pants, Etc.
Sportette Industries (ILGWU)	Bath, PA	03/14/94	03/01/94	29,617	Ladies' Blouses, Vests, Pants, Etc.
Sportette Industries, Inc. (ILGWU)	Nazareth, PA	03/14/94	03/01/94	29,618	Ladies' Blouses, Vests, Pants, Etc.
Ironhead, Inc. (ILGWU)	Coplay, PA	03/14/94	03/01/94	29,619	Ladies' Blouses, Vests, Pants, Etc.
Parker Bertea Aerospace (Wkrs)	Irvine, CA	03/14/94	02/18/94	29,629	Aircraft Equipment.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Parker Bertea Aerospace (Wkrs)	Irvine, CA	03/14/94	02/18/94	29,621	Aircraft Equipment.
Parker Bertea Aerospace (Wkrs)	Moorpark, CA	03/14/94	02/18/94	29,622	Aircraft Equipment.
Parker Bertea Aerospace (Wkrs)	Irvine, CA	03/14/94	02/18/94	29,623	Aircraft Equipment.
Parker Bertea Aerospace (Wkrs)	Irvine, CA	03/14/94	02/18/94	29,624	Aircraft Equipment.
Parker Bertea Aerospace (Wkrs)	Irvine, CA	03/14/94	02/18/94	29,625	Aircraft Equipment.

[FR Doc. 94–7100 Filed 3–24–94; 8:45 am]
BILLING CODE 4510–30–M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of March, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,367; WACO, Inc., Danvers, MA

TA–W–29,426; Investments, Inc., Prague, OK

TA–W–29,366; General Seafood, Magnolia, MA

TA–W–29,147; General Tire, Inc., Mayfield, KY

TA–W–29,402; Special Products of Oregon, Phoenix, OR

TA–W–29,359; Atlas of Boston, Philadelphia, PA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–29,337; Union Texas Petroleum, Midland, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–29,350; Sundown Operating, Inc., Sundown, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–29,261; Dahlberg, Inc., Golden Valley, MN

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,320; Gibbs Ellison, Inc., Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

Affirmative Determinations for Worker Adjustment Assistance

TA–W–29,358; Emerson Electric Co., White Rodgers Div., Logansport, IN

A certification was issued covering all workers separated on or after October 1, 1993.

TA–W–29,429; Forwest Drilling, Inc., Roosevelt, UT

A certification was issued covering all workers separated on or after January 10, 1993.

TA–W–29,378; Duncannon Dress Co., Duncannon, PA

A certification was issued covering all workers separated on or after December 23, 1992.

TA–W–29,330; J.M. Huber Corp., Oil and Gas Div., Houston, TX

A certification was issued covering all workers separated on or after December 6, 1992.

TA–W–29,361; Bailey Controls Co., Williamsport, PA

A certification was issued covering all workers separated on or after December 27, 1992.

TA–W–29,533; Oxford of Kingstree, Kingstree, SC

A certification was issued covering all workers separated on or after January 18, 1993.

TA–W–29,446; Keytronic Corp., Spokane, WA

A certification was issued covering all workers separated on or after January 17, 1994.

TA–W–29,447; Keytronic Corp., Cheney, WA

A certification was issued covering all workers separated on or after March 10, 1994.

TA–W–29,374; G.T. Fashions, Inc., Hammonton, NJ

A certification was issued covering all workers separated on or after December 15, 1992.

TA–W–29,395; London Fog Industries, Portsmouth, VA

A certification was issued covering all workers separated on or after January 7, 1993.

TA–W–29,387; TA–W–29,396; London Fog Industries, Baltimore, MD and Boonsboro, MD

A certification was issued covering all workers separated on or after December 23, 1992.

TA–W–29,409; Coordinated Apparel Group, Inc., Penn Val Fabrics Div., Schylkill Haven, PA

A certification was issued covering all workers separated on or after December 21, 1992.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a) subchapter D, chapter 2, title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of February, 1994.

In order for an affirmative determination to be made and a

certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased.

(C) That the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

NAFTA–TAA–00017; Hollywood Shake, Inc., Forks, WA

The investigation revealed that criteria (3) and criteria (4) were not met. There was no shift in production from the subject firm to Canada or Mexico.

A survey of major customers that decreased purchases from Hollywood Shake, Inc., revealed that customers decreased their imports from Canada/Mexico of cedar shakes & shingles in 1993 compared to 1992 and in Jan. 1994 compared to Jan. 1993.

NAFTA–TAA–00016; Metacomet Manufacturing Co., Inc., Fall River, MA

The investigation revealed that criteria (3) and criteria (4) were not met. There was no sift in production of belts and related trim from the workers' firm to Canada or Mexico during the relevant period.

The investigation further revealed that increased imports from Mexico or Canada did not contribute importantly to the worker separations & the sales & production declines at Metacomet Manufacturing Co., Inc.

NAFTA–TAA–00011; The Proctor & Gamble Manufacturing Co., Quincy, MA

The investigation revealed that criteria (1) and criteria (4) were not met.

The petition of NAFTA–TAA was filed on the basis of an anticipated shift in the production of some bar soap products from the The Proctor & Gamble Manufacturing Co.'s Quincy, MA plant to a plant in Canada. At the present time, this shift of production has not occurred & is not scheduled to occur for several months. There have been no layoffs since December 8, 1993, the earliest reachback date for coverage under the NAFTA–TAA program.

Affirmative Determination NAFTA–TAA

NAFTA–TAA–00021; Xerox Imaging Systems, Peabody, MA

A certification was issued covering all workers engaged in employment related to the production of the "Reading Edge" at Xerox Imaging Systems in Peabody, MA separated on or after December 8, 1993.

NAFTA–TAA–00032; Niagara Frontier Tariff Bureau, Inc., Buffalo, NY

A certification was issued covering all workers of Niagara Frontier Tariff Bureau, Inc., Buffalo, NY separated on or after December 8, 1993 and before September 30, 1994.

NAFTA–TAA–00015; Parkway Fabricators, South Amboy, NJ

A certification was issued covering all workers engaged in employment related to the production of neoprene clothing products at Parkway Fabricators, South Amboy, NJ separated on or after December 8, 1993.

An investigation is currently in process for trade adjustment assistance under section 221 of the Trade Act The number assigned to this investigation is TA–W–29,478.

NAFTA–TAA–000145; Alcatel Data Networks, Inc., Mt. Laurel, NJ

A certification was issued covering all workers engaged in employment related to the production of printed circuit boards at the East Park Drive and the Gaither Drive facilities of Alcatel Data Networks, Inc, Mt. Laurel, NJ separated on or after December 8, 1993.

The foregoing determination does not apply to workers engaged in the production of communications/data switching equipment.

An investigation is currently in process for trade adjustment assistance under section 221 of the Trade Act. The number assigned to this investigation is TA–W–29,479.

I hereby certify that the aforementioned determinations were issued during the month of March, 1994. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: March 16, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–7099 Filed 3–24–94; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL COMMISSION ON INTERMODAL TRANSPORTATION

Notice of Public Hearings and Comments

SUMMARY: The National Commission on Intermodal Transportation is seeking comments and recommendations from interested parties on how to achieve a more efficient and productive intermodal transportation system in the United States.

The Commission is charged by Congress to "make a complete investigation and study of intermodal transportation in the United States and internationally." Created by Section 5005 of the Intermodal Surface Transportation Efficiency Act of 1991, the Commission has members appointed by the President and the Congressional leadership. The Commission is chaired by Robert D. Krebs, Chairman, President and CEO of Santa Fe Pacific Corporation.

The Commission's legislation specifies three fundamental tasks: (1) Determine the status of, and problems related to, intermodal transportation today; (2) identify the resources needed to enhance intermodal transportation; and (3) make recommendations on how to achieve an efficient intermodal transportation system. The Commission will focus on passenger and freight traffic, public and private sectors, and all modes of transportation. The Commission will submit its findings to Congress on September 30, 1994.

DATES: Public hearings will be held in Washington D.C. on May 2, 1994, New Orleans, LA on May 10, 1994, and Los Angeles, CA on June 20, 1994.

ADDRESSES: Submit written, signed comments to Anne D. Aylward, Executive Director, NCIT, 301 N. Fairfax Street, Alexandria, VA 22314. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope. Those interested in testifying please contact the Commission by telephone at (703) 603–0153 or fax (703) 603–0159.

FOR FURTHER INFORMATION: Please call the National Commission on Intermodal Transportation (703) 603–0153.

SUPPLEMENTARY INFORMATION:

Areas of Inquiry

The following questions illustrate the type of issues the public is invited to address, but they are emphatically not intended as a comprehensive list of issues that the Commission expects to consider. Respondents may focus on these issues and any other specific matters that would bear upon the improvement of intermodal transportation in the United States.

Status of the Existing System

- What is the status of intermodal transportation today? Where is intermodalism working?
- What are the key intermodal bottlenecks in freight traffic?
- What are the key intermodal bottlenecks in passenger traffic?
- What are the best examples of efficient intermodal facilities and operations—passenger and freight?
- How would the proposed National Transportation System (NTS) affect the development of an intermodal system? What criteria should be used in developing an NTS?
- How has intermodalism developed in the freight sector? Are there lessons transferable to the passenger sector?

Legal, Regulatory, and Institutional Questions

- Would modification of government structures enhance development of an efficient itnermodal transportation system? If so, how?
- How can institutional barriers between private (freight) and public (passenger) be reduced to enhance intermodal planning at the local, state and national levels?
- Are there specific legal impediments to increasing intermodal efficiency such as: outdated, inefficient, cumbersome regulations/laws, jursidicational issues among governments, impediments to sharing resources, inconsistency of regulations among states, and antitrust impediments to standardization?
- Are there structural or process impediments to improving existing infrasture capacity?
- Has ISTEA made a difference in MPO treatment of intermodal projects?
- Do the existing intermodal planning structures at the state and local levels need additional national standards and criteria to insure that a consistent national plan emerges from the MPO/state process?
- What are the barriers to promoting "seamless borders" for international intermodal movements?

Funding and Financial Questions

- Is adequate funding of intermodal transportation presently available? Identify specific gaps.
- What additional investment is required to meet the nation's needs, including access to ports, airports, and intermodal terminals?
- Are innovative methods and sources of financing needed to provide adequate funding for intermodal transportation? If so, what might they include?
- How can federal, state and local governments best leverage transportation investments to encourage intermodal transportation?
- Are there significant opportunities for investment by the private sector or for privatization that would advance intermodalism? What barriers exist?

Technology and Research Questions

- What new technology will enhance development of an efficient intermodal transportation system? How can the federal government encourage its introduction?
- How can decision-support planning tools be developed for use in the public resource allocation process?
- Are there essential intermodal R & D needs that cannot be met by the private sector alone?
- How can the concerns of publics with special needs (elderly, handicapped, disadvantaged, etc.) be better served by intermodal systems?

Respondents may focus on these issues and any other specific matters that would bear upon the improvement of intermodal transportation in the United States.

Sandra K. Bushue,

Deputy Director.

[FR Doc. 94–7104 Filed 3–24–94; 8:45 am]

BILLING CODE 6820–DF–P–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Biochemistry and Molecular Structure and Function; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting: Advisory Panel for Biochemistry and Molecular Structure and Function in the Division of Molecular and Cellular Biosciences. Panel C

Date and Time: Thursday, Friday, and Saturday, April 14, 15, and 16, 1994, 8:30 a.m. to 5 p.m.

Place: Quality Hotel at Courthouse, The Kennedy Room, 1200 North Courthouse Road, Arlington, Virginia 22201.

Type of Meeting: Part-Open.

Contact Persons: Drs. Robert L. Uffen and Gary Cecchini, Program Directors for Metabolic Biochemistry, Division of Molecular and Cellular Biosciences, Room 655, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22201. Telephone: (703) 306–1443.

Purpose of Meeting: To provide advice and recommendations concerning research proposals submitted to the Metabolic Biochemistry Program of the Division of Molecular and Cellular Biosciences at NSF for financial support.

Agenda: Open session: April 15, 1994—12:15 to 1:30 p.m.—Discussion on Research Trends and Opportunities.

Closed Session:

April 14, 1994—8:30 a.m. to 5 p.m.
April 15, 1994—8:30 a.m. to 12:15 p.m. and 1:30 p.m. to 5 p.m.
April 16, 1994—8:30 a.m. to 12 p.m.

To review and evaluate research proposals submitted to the Metabolic Biochemistry Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 21, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–7027 Filed 3–24–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting of the Special Emphasis Panel in Biological Sciences (1754).

Date & Time: April 11 & 12, 1994; 8:30 a.m. to 5 p.m.

Place: Room 340, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

Contact Person: Ms. Carter Kimsey, Program Manager, National Science Foundation, 4201 Wilson Boulevard, room 615, Arlington, Virginia 22230. Telephone No. (703) 306–1469.

Agenda: To review and evaluate Minority Postdoctoral Research Fellowships proposals as a part of the selection process for awards.

Type of Meeting: Closed.

Purpose of Meeting: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a

proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 (c) and (6) of the Government in the Sunshine Act.

Dated: March 21, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–7026 Filed 3–24–94; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Cognitive, Psychological & Language Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting for the Advisory Panel for Cognitive, Psychological & Language Sciences (#1758).

Name: Advisory Panel for Cognitive, Psychological & Language Sciences.

Date and Time: April 13–15, 1994; 9 a.m.–6 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, room 380, Arlington, VA 22230.

Type of Meeting: Part-Open.

Contact Person: Dr. Leslie Zebrowitz, Program Director for Social Psychology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1728.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Open Session: Friday, April 15, 1994; 9 a.m.–12 p.m. To discuss trends and opportunities in the area of social psychology and NSF policies and practices. Closed session: April 13–14, 1994; 9 a.m.–6 p.m. and April 15, 1994; 12 p.m.–6 p.m. To review and evaluate social psychology proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 21, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–7041 Filed 3–24–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design & Manufacturing Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 42–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee CODE: Special Emphasis Panel in Design & Manufacturing Systems (1194).

Date and Time: April 13, 1994, 8:30 a.m. to 5 p.m.

Place: 4201 Wilson Boulevard, Room 330, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. K. (Cheena Srinivasan, Program Director, National Science Foundation, 4201 Wilson Boulevard, room 550, Arlington, VA 22230, Telephone: (703) 306–1328.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate NSF Young Investigator Award Nominations as part of the selection process for awards.

Reason for Closing: The nominations being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 21, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–7017 Filed 3–24–94; 8:45 am]

BILLING CODE 7555–01–M

Earth Sciences Proposal Review Panel; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Earth Sciences Proposal Review Panel (1569).

Date: April 11, 12 & 13, 1994.

Time: 8:30 a.m. to 6 p.m. each day.

Place: University of Chicago, Center for Advanced Radiation Sources, 5640 S. Ellis Avenue, Chicago, IL 60637.

Type of Meeting: Closed.

Contact Person: Dr. Daniel F. Weill, Program Director, Instrumentation & Facilities Program, Division of Earth Sciences, room 785, National Science Foundation, Arlington, VA, (703) 306–1558.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate instrumentation and facilities proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 21, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–7016 Filed 3–24–94; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Economics, Decision and Management Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Economics, Decision and Management Sciences (#1759).

Date and Time: April 14–16, 1994; 9 a.m.–6 p.m.

Place: Rooms 360 & 370, 4201 Wilson Boulevard, Arlington VA.

Type of Meeting: Closed.

Contact Person: Dr. Daniel Newlon, Program Director for Economics, Division of Social, Behavioral and Economic Research, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1753.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate economics proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 21, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–7023 Filed 3–24–94; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Economics, Decision and Management Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Economics, Decision and Management Sciences (#1759).

Date and Time: April 14–15, 1994 8:30 am to 6 pm.

Place: Room 320, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Robin Cantor, Program Director for DRMS, Division of Social, Behavioral, and Economics Research, room 995, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA. Telephone: (703) 306–1757.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate decision, risk and management sciences proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 21, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–7025 Filed 3–24–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as Amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communications Systems

Date & Time: April 18–19, 1994

Place: National Science Foundation, 4201 Wilson Boulevard, Room 530, Arlington, Virginia

Contact Person: Dr. Lawrence S. Goldberg, Acting Division Director, ECS, Room 675, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Telephone: 703/306–1340

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Research Initiation and Research Equipment applications as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act.

Dated: March 21, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–7009 Filed 3–24–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Elementary, Secondary and Informal Education; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: April 7, 1994; 8 a.m. to 5 p.m.; April 8, 1994; 8 a.m. to 5 p.m.

Place: Holiday Inn, 4610 N. Fairfax Dr., Arlington, VA 22203.

Type of Meeting: Closed.

Contact Person: Dr. Barbara H. Butler, Program Director, Division of Elementary, Secondary and Informal Education, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1616.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 21, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–7012 Filed 3–24–94; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Geosciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Dates: April 11–12, 1994.

Time: 8:30 a.m. to 5 p.m.

Place: Room 375, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

Type of Meeting: Open.

Contact Person: Ms. Altie Metcalf, Staff Associate for Budget and Planning, Directorate for Geosciences, suite 705, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230, (703) 306–1502.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for research, education, and human resources development in the geosciences.

Agenda: Long Range Planning for Geosciences.

Dated: March 21, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–7014 Filed 3–24–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Geosciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Geosciences (1756).

Date and Time: April 15, 1994; 9 a.m. to 5 p.m.

Place: Conference Room #390, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Marvin E. Kauffman, Program Director, Education and Human Resources Program, Division of Earth Sciences, Room 785, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1557.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate GEO/NYI proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 21, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–7020 Filed 3–24–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Human Resource Development (HRD); Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Human Resource Development #1199.

Date and Time: April 11, 1994; 10 a.m. – 12 p.m.

Place: Room 830; National Science Foundation; 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Lawrence Scadden, Mary Kohlerman, Program Directors, PPD; Human Resource Development (HRD); room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1636.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Programs for Persons with Disabilities (PPD) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a

proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 21, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–7021 Filed 3–24–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panel in Materials Research.

Date and Time: April 12, 1994—8 am–5 pm.

Place: National Science Foundation, 4201 Wilson Blvd., rooms 1060, 1020, 360, Arlington, VA 22230.

Date and Time: April 20, 1994—8 am–5 pm.

Place: National Science Foundation, 4201 Wilson Blvd., room 310, Arlington, VA 22230.

Date and Time: April 22, 1994—8:30 am–5 pm.

Place: National Science Foundation, 4201 Wilson Blvd., room 365, Arlington, VA 22230.

Date and Time: April 26, 1994—12 pm–5 pm; April 27, 1994—8:30–5 pm.

Place: National Science Foundation, 4201 Wilson Blvd., rooms 1020, 310.2, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Robert J. Reynik, Head, Office of Special Programs in Materials room 1065, National Science Foundation, Arlington, VA 22230, Telephone (703) 306–1814.

Purpose of Meetings: To provide advice and recommendations concerning support for DMR 1994 Young Investigator Awards Program Proposals.

Agenda: Evaluation of proposals.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b. (c)(4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–7018 Filed 3–24–94; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Mathematical and Physical Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announced the following meeting.

Date and Time: April 11, 1994—8:30 a.m.–5:30 p.m.; April 12, 1994—8:30 a.m.–12 noon.

Place: XEROX Palo Alto Research Center, 3333 Coyote Hill Road, Palo Alto, CA.

Type of Meeting: Open.

Contact Person: Judith S. Sunley, Executive Officer, MPS, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1802.

Minutes: May be obtained from the contact person listed above.

Meeting Purpose: To provide advice and recommendations on development of MPS strategic planning mechanisms; provide advice on the appropriateness of current disciplinary boundaries; evaluate the current MPS interfaces with academia and industry; and advise on methods of achieving overall program excellence in MPS.

Agenda

April 11, 1994

A.M.—
Introductory Remarks.
MPS Budget & Priorities.
P.M.—
Working Groups—Strategic Planning for MPS/NSF.

April 12, 1994

A.M.—
Continuation of Working Groups.
Discussion/Summary of Issues.

Dated: March 21, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–7019 Filed 3–24–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mechanical and Structural Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announced the following meeting:

Name: Special Emphasis Panel in Mechanical and Structural Systems.

Date and Time: April 7–8, 1994, 8:30 a.m. to 5 p.m.

Place: National Science Foundation, room 530 & 580, Arlington, VA 22230.

Notice of Meeting: Closed.

Contact Person: Dr. Oscar W. Dillon, Dr. William A. Spitzig, Program Directors, 4201 Wilson Blvd., Arlington, VA 22230., Telephone: (703) 306–1361.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Review and evaluate Mechanical and Structural Systems NSF RIA/REG proposals.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 21,1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–7011 Filed 3–34–94; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Neuroscience; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Neuroscience.

Date and Time: April 11–13, 1994; 9 a.m. to 5 p.m.

Place: Rm. 370, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Part-Open.

Contact Person: Dr. Christopher Platt, Program Director, Sensory Systems, Division of Integrative Biology and Neuroscience, rm. 370 National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Telephone: (703) 306–1424.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Mintues: May be obtained from the contact person listed above.

Agenda: Open Session: April 11, 1994; 10 a.m. to 12 noon, to discuss goals and assessment procedures.

Closed Session: April 11, 1994; 9 a.m. to 10 a.m., and 12 noon to 5 p.m., April 12 and 13, 9 a.m. to 5 p.m. To review and evaluate Sensory Systems proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 21, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–7015 Filed 3–24–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–

463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Physics.
Date: April 6–8, 1994.
Place: Bridge Annex, California Institute of Technology 1201 E. California Boulevard, Pasadena, California.
Type of Meeting: Closed.
Contact Person: Dr. David Berley, Project Manager, Laser Interferometer Gravitational Observatory, Physics Division, room 1015, National Science Foundation, 4201 Arlington Blvd., Arlington, VA 22230. Telephone: (703) 306–1892.
Purpose of Meeting: To review and assess the cost estimate of the Laser Interferometer Gravitational-Wave Observatory (LIGO) project.
Agenda: To evaluate the current cost estimate for the LIGO project in the context of the scope and projected schedule. A detailed review of the cost estimate for each of the subsystems will be performed.
Reason for Closing: The Project plans being reviewed include information of a proprietary or confidential nature, including technical information; information on personnel and proprietary data for present and future subcontracts. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 21, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–7022 Filed 3–24–94; 8:45am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Physics; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Physics.
Date and Time: April 15, 1994; 8:30 a.m.–4:30 p.m.
Place: Rm. 1020, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.
Type of Meeting: Closed.
Contact person: Dr. Rolf M. Sinclair, Program Director for Special Programs, Division of Physics, room 1015, National Science Foundation. Telephone: (703) 306–1890.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate Physics NYI proposals as part of the selection process for awards
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) (and (6) of the Government in the Sunshine Act.

Dated: March 21, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–7024 Filed 3–24–94; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Physiology and Behavior; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Physiology and Behavior.
Date and Time: April 5–7, 1994, 8:30 a.m. to 5 p.m.
Place: Room 321, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203.
Type of Meeting: Part-Open.
Contact Person: Dr. Sharon B. Emerson, Program Director, Ecological and Evolutionary Physiology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203, room 321 (703) 306–1421.
Minutes: May be obtained from the contact person listed above.
Purpose of Meeting: To provide advice and recommendation concerning proposals submitted to the NSF for financial support.
Agenda: Closed Session—April 5 and 7, 1994, 8:30 a.m. to 5 p.m., and April 6, 1994, 8:30 a.m. to 4 p.m. To review and evaluate Evolutionary and Ecological Physiology as part of the selection process for awards. Open Session—April 6, 1994, 4 p.m. to 5:30 p.m. for a discussion with the Thomas E. Brady, Acting Division Director of IBN and Mary E. Clutter, Assistant Director of BIO on research trends and opportunities in Ecological and Evolutionary Physiology.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 21, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–7013 Filed 3–24–94; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Polar Programs; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Polar Programs.
Date and Time: April 14 and 15, 1994, 8:30 a.m.–5 p.m. each day.
Place: Room 340, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.
Type of Meeting: Open.
Contact Person: Dr. Dennis S. Peacock, Science Section Head, Office of Polar Programs, room 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1033.
Minutes: May be obtained from the contact person listed above.
Purpose of Meeting: Serves to provide expert advice to the U.S. Antarctic Programs and the Arctic Program, including advice on science programs, polar operations support, budgetary planning, and polar coordination and information.
Agenda: The OPP Advisory Committee meets on April 14/15 to discuss the following agenda topics—FY 94/95 Budget, Congressional Update, Organization and Long Range Planning (LRP). The LRP topic will include presentations on Facilities, operations/logistics and discussion of science priorities.

Dated: March 21, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–7010 Filed 3–24–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Confirmatory Order Modifying License (Effective Immediately)

In the Matter of Allegheny General Hospital Pittsburgh, Pennsylvania [Docket Nos. 030–02981, 030–00462, 030–30452; License Nos. 37–01317–01, 37–01317–02, 37–01317–03 EA 94–051]

I

Allegheny General Hospital (Licensee), Pittsburgh, Pennsylvania, is the holder of Byproduct/Source Material Licenses Nos 37–01317–01; 37–01317–02; 37–01317–03 (Licenses), issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR parts 30 and 33. The Licenses authorize the Licensee to use radioactive material under a broad scope license, possess an irradiator for calibrations of instruments, and possess an irradiator for irradiation of blood products and biological samples.

License No. 37–01317–01 was issued on October 25, 1956, and was due to expire on January 31, 1989, but is currently under timely renewal pending staff action based on a licensee request to renew the license, dated December 15, 1988. License No. 37–01317–02 was issued on July 19, 1957, was renewed on March 23, 1992, and is due to expire on March 31, 1997. License No. 37–0117–03 was issued on May 31, 1988, was

recently renewed on October 4, 1993, and is due to expire on October 31, 1988.

II

On December 13–20, 1993, the NRC performed an inspection of licensed activities at the Licensee's facility. During the inspection, numerous violations of NRC requirements were identified. The violations are described in detail in a Notice of Violation and Proposed Imposition of Civil Penalties issued concurrently on this date. The violations, which demonstrate a significant lack of management attention to, and control of, licensed activities at the facility, included: (1) 48 examples of failure to prepare written directives prior to the administration of radioactive materials to patients at the facility and a failure to instruct a nuclear medicine technologist in the Licensee's Quality Management Program, as required by NRC requirements; and (2) many other violations (related to such areas as failure to maintain security over licensed material, and violations of radiation safety requirements for irradiators, performing required surveys, providing training to nursing staff, maintaining appropriate procedures, ensuring control of material, and maintaining appropriate records) which collectively are indicative of a significant lack of management attention to, and control of, licensed activities.

The violations are of significant regulatory concern since the Licensee possesses a large broad scope license which places a significant responsibility on the Radiation Safety Committee (RSC), as well as the Radiation Safety Officer (RSO), to ensure that licensed activities are conducted safely and in accordance with NRC requirements.

The Licensee's failure to maintain sufficient control of radioactive materials raises significant questions regarding the adequacy of the Licensee's oversight of activities at its facility, as well as its ability to assure that activities at those facilities are conducted safely and in accordance with NRC requirements. Accordingly, without independent assessments of the Licensee's radiation safety program and a performance improvement plan, there is a substantial question as to whether licensed activities will be adequately controlled at the Licensee's facilities.

III

During an enforcement conference on February 2, 1994, as well as in telephone conversations on February 4 and 9, 1994, and March 16, 1994, between Mr. Lou Shapiro of the Licensee's staff and Dr. Ronald Bellamy of the NRC Region I staff, the Licensee committed to retain the services of an independent consultant to perform an assessment of its radiation safety program and to develop a performance improvement plan based upon the assessment findings. The Licensee has consented to the terms of this Order.

I find that Licensee's commitments are acceptable and necessary and conclude that, with these commitments and the implementation of an appropriate performance improvement plan, the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that the Licensee's commitments be confirmed by this Order. Pursuant to 10 CFR 2.202, I have also determined, based on the Licensee's consent and on the significant of the violations described above, that the public health and safety require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 30 and 33, *it is hereby ordered*, effective immediately, that licenses nos. 37–01317–01, 37–01317–02, and 37–01317–03 are modified as follows:

A. The Licensee shall retain the services of a consultant, with extensive experience in the management and implementation of a broad scope radiation safety program, including activities similar to those authorized under the Licensee's program, to perform an assessment of the Licensee's radiation safety program. Within 30 days from the effective date of this Order, the Licensee shall submit the name and qualifications of the consultant to the Regional Administrator, NRC Region I, for approval.

B. Within 90 days of NRC approval of the consultant selection as described under Section IV.A of this Order, the assessment shall be completed, and a copy of the assessment report shall be submitted to the NRC within the following 15 days. The assessment of the Licensee's radiation safety program shall include, but not be limited to, a review of:

1. The Licensee's organization, and assigned responsibilities and authorities within that organization;

2. The Licensee's program for training and retraining individuals working with NRC-licensed materials, in NRC regulations, in the conditions of the Licenses, and in radiologically safe practices for using licensed material;

3. The Licensee's methods of approving individuals for the use of licensed materials and developing procedures for the safe use of licensed materials;

4. The Licensee's program for training and qualifying all individuals involved in managing, supervising, inspecting and auditing licensed activities;

5. The Licensee's program of surveillance and audits to determine compliance by individual users of licensed materials with NRC regulations, the conditions of the NRC Licenses, and the Licensee's own procedures for the safe use of radioactive materials;

6. The adequacy of the existing staffing within the Radiation Safety Department, to ensure that the items set forth in Sections IV.B.2 through V.B.5 of this Order are adequately performed; and,

7. The Licensee's management of the radiation safety program, including the function of the Radiation Safety Committee and its methods of monitoring the program to ensure that problems, when they exist, are promptly identified and effectively corrected.

C. Within 120 days of NRC approval of the consultant selection described under Section IV.A of this Order, the Licensee shall submit a performance improvement plan to the Regional Administrator, NRC Region I, describing its methods of implementing the recommendations of the assessment report, or providing justification for alternate or no corrective action, if any specific recommendations are not adopted. This plan shall include:

1. Action items completed or to be performed;

2. Schedules for, or dates of, completion of each specific action item; and

3. A system for monitoring and tracking the status and completion of the action items.

D. Upon completion of all action items, a final report shall be submitted by the Licensee to the Regional Administrator, NRC Region I. During implementation of the performance improvement plan, the Licensee shall provide written quarterly status reports to the Regional Administrator, NRC Region I, concerning the implementation of the plan, until such time as all items in the performance improvement plan have been implemented and the final report issued.

The Regional Administrator, NRC Region I, may relax or rescind, in writing, any of the above conditions

upon demonstration by the Licensee of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), (57 FR 20194) May 12, 1992, any person adversely affected by this Order, other than the Licensee may, in addition to demanding a hearing, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated at Rockville, Maryland this 17th day of March 1994.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 94–7062 Filed 3–24–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 72–10]

Northern States Power Co.; Issuance of Amendment to Materials License SNM–2506

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 1 to Materials License No. SNM–2506 held by Northern States Power Company for the receipt and storage of spent fuel at the Prairie Island independent spent fuel storage installation, located in Goodhue County, Minnesota. The amendment is effective as of the date of issuance.

The amendment corrects the license making administrative changes to correct an error which was made when the license was issued. These changes do not affect fuel receipt, handling, and storage safety.

The amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that, pursuant to 10 CFR 51.22(c)(11), an environmental assessment need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, see (1) Amendment No. 1 to Materials License No. SNM–2506, and (2) the Commission's letter to the licensee dated March 17, 1994. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room at the Technology & Science Department, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, MN 55401.

Dated at Rockville, Maryland this 17th day of March, 1994.

For the Nuclear Regulatory Commission.

Charles J. Haughney,

Chief, Storage and Transport Systems Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 94–7064 Filed 3–24–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–333]

Power Authority of the State of New York; James A. FitzPatrick Nuclear Power Plant

Exemption

I

The Power Authority of the State of New York (PASNY or the licensee) is the holder of Facility Operating License No. DPR–59, which authorizes operation of the James A. FitzPatrick Nuclear Power Plant (the facility or FitzPatrick). The license provides, among other things, that the facility is subject to all the rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a boiling water reactor located at the licensee's site in Oswego County, New York.

II

Section III of Appendix J to 10 CFR part 50 requires the development of a program to conduct periodic leak testing of the primary reactor containment and related systems and components, and components penetrating the primary containment pressure boundary. The interval between local leak rate tests for containment isolation valves (Type C tests) is specified by section III.D.3 to be no greater than 2 years.

III

By letter dated January 11, 1994, the licensee requested a schedular exemption pursuant to 10 CFR 50.12(a) from the requirements of 10 CFR part 50, Appendix J, section III.D.3. Specifically, the licensee requested one-time relief from the requirement to perform Type C tests (local leak rate tests) at intervals of no greater than 2 years for the shutdown cooling isolation valves (10MOV–17 and 10MOV–18). This one-time only delay, until the next refueling outage currently scheduled to begin in November 1994, was requested for the performance of these leakage tests. The licensee's request was necessitated by the extended 1991–1993 refueling outage and the length of the current operating cycle.

The shutdown cooling valves were previously tested during the last refueling outage (Reload 10/Cycle 11). This was an extended outage that began in November 1991 and ended in January 1993. The Type C tests on the subject valves were performed on May 30, 1992, for the outboard isolation valve 10MOV–17, and June 5, 1992, for the inboard isolation valve 10MOV–18. Subsequent delays in the outage resulted in these tests being performed

significantly in advance of the start of the operating cycle (more than 7 months prior to the end of the outage). As a result, the 2 year test interval will be reached for these valves (May 30, 1994/ June 5, 1994) 6 to 7 months prior to the next scheduled refueling outage. The exemption would permit a deferral in the performance of the Type C test of the shutdown cooling isolation valves beyond the 2-year limiting interval to the next refueling outage.

The only effective means of removing reactor core decay heat is with the shutdown cooling mode of the RHR system. This requires both of the stated isolation valves to be in the open position. The shutdown cooling mode of the RHR system must be removed from service for approximately 24 hours to perform a local leak rate test (Type C) of its isolation valves. This is the time required to tag-out the system, drain the line, perform the test, refill the line, and return the system to service. To avoid overheating the reactor coolant system with the shutdown cooling mode inoperable, one of the following two conditions must exist:

1. The reactor needs to be shutdown for several months to permit sufficient reduction in decay heat levels for use of an alternate shutdown cooling method without placing the plant in the refueling condition. The alternate cooling method with the highest heat removal capacity is the Reactor Water Cleanup system in the blowdown mode. However, the reactor must be shutdown for more than 3 months before this method can handle the decay heat load.

2. The plant needs to be in the refueling condition; i.e., reactor head removed, reactor cavity flooded up and connected to the spent fuel pool. This permits the removal of the normal shutdown cooling system from operation and testing of these valves.

A three week surveillance/ maintenance outage is planned for spring 1994. However, the decay heat levels present during any outage less than several months precludes the use of the alternate cooling method without placing the plant in the refueling configuration. The exemption would preclude the need to place the plant in the refueling configuration prior to the next scheduled refueling outage. Without the exemption, the licensee would be required to remove the drywell and reactor heads and connect the reactor cavity to the spent fuel pool solely for the purpose of testing the shutdown cooling isolation valves. Placing the plant in the refueling configuration would significantly lengthen the spring 1994 outage and would require significant resources. Furthermore, placing the plant in the refueling configuration to accommodate testing of the isolation valves would significantly increase occupational radiation exposures. For these reasons, the licensee has determined that compliance with the regulation would result in undue hardship and costs.

IV

Section III.D.3 of Appendix J to 10 CFR part 50 states that Type C tests shall be performed during reactor shutdowns for refueling, at an interval not to exceed 2 years. The licensee has requested a one-time exemption from the regulations.

The operating configuration of the shutdown cooling isolation valves and the RHR system when the reactor coolant system is pressurized (greater than 75 psig) substantially minimizes the possibility of gross leakage through these valves. A high reactor pressure interlock, as well as plant operating procedures, assures that these isolation valves are closed whenever reactor pressure is above 75 psig. This protects the low pressure RHR system from overpressurization. The RHR system suction piping is designed for 450 psig. Gross leakage while the reactor is pressurized would be detected by high pressure on the RHR suction piping or an increase in suppression pool inventory. Consequently, the maintenance of normal operating status of the RHR system assures the absence of gross leakage through these valves.

These valves also receive an isolation signal in the event of a plant accident (reactor vessel low water level or high drywell pressure). This assures isolation of a potential leakage path from the reactor coolant system to the reactor building. For this path to exist, leakage through both isolation valves, and a breach of the RHR system piping would need to occur simultaneously. Since the isolation valves are maintained closed with the reactor pressurized, it is improbable the leakage through the valves will increase while the plant is operating. The redundant isolation valves provide two leakage barriers which limit the pathway leakage rate to that experienced by the valve with smallest leakage rate. For these reasons, the potential for significant leakage to the reactor building by way of the shutdown cooling line is minimal.

The penetration included in the licensee's schedular exemption request represents only 6.4 percent of the total "as left" leakage at the beginning of the current operating cycle. The total "as left" minimum path leakage for all penetrations was only 0.073 La and the total "as left" minimum path leakage for the penetration addressed in the proposed exemption was only 0.0046 La. The replacement of both isolation valves with valves of improved design provides added confidence that excessive leakage will not be experienced. The inboard valve 10MOV–18 was replaced during the 1985 refueling outage and has successfully passed three out of four Type C tests performed during refueling outages since its replacement. The outboard isolation valve 10MOV–17 was replaced with a similarly designed new valve during the last refueling outage (1992). The limited number of valve strokes these valves are subject to over any one operating cycle minimizes valve degradation due to wear. This provides reasonable assurance that the requested surveillance interval expansion will not result in the Types B and C leakage rate total exceeding the 0.6 La limit of 10 CFR part 50, Appendix J. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed schedular exemption.

The 2-year interval requirement for Type C testing is intended to be often enough to preclude significant deterioration between tests and long enough to permit the tests to be performed during routine plant outages. Leak rate testing of containment isolation valves during plant shutdown is preferable because of the lower radiation exposures to plant personnel. Furthermore, some containment isolation valves cannot be tested at power. For those valves that cannot be tested during power operation, or for which testing at power would yield unnecessary radiation exposure of personnel, the NRC staff believes the increase in confidence of containment integrity following a successful test is not significant enough to justify the hardships and costs associated with performing the tests within the 2-year time period.

V

The Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption; namely that application of the regulation in the particular circumstance is not necessary to achieve the underlying purpose of the rule. The underlying purpose of Section III.D.3 of Appendix J to 10 CFR part 50 is to

provide an interval short enough to prevent serious deterioration from occurring between tests and long enough to permit testing to be performed during regular plant outages. For containment isolation valves that cannot be tested at power, or for containment isolation valves where testing involves unreasonable risk to personnel and equipment, the increased confidence in containment integrity following successful testing is not significant enough to justify the hardships associated with performing the test within the 2-year interval. Specifically, any potential incremental benefit of performing the tests within the 2-year requirement would not be sufficient to offset the increased occupational radiation exposure associated with testing, the risk to plant safety associated with removing the primary method of decay heat removal from service, and the undue financial burden of placing the plant in the refueling configuration and significantly extending the length of the spring 1994 maintenance/surveillance outage. The licensee has presented information accepted by the Commission, which gives a high degree of confidence that the components affected by this exemption will not degrade to an unacceptable extent. Acceptable leakage limits are defined in sections III.B.3(a) and III.C.3 of Appendix J to 10 CFR part 50.

Pursuant to 10 CFR 51.32, the Commission has determined that granting the above exemption will have no significant impact on the quality of the human environment (March 16, 1994, 59 FR 12382).

This Exemption is effective upon issuance and shall expire prior to restart following the next FitzPatrick refueling outage which is currently scheduled to commence in November 1994.

Dated at Rockville, Maryland, this 18th day of March 1994.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Acting Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–7063 Filed 3–24–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Expedited Request for Reinstatement of an Expired Clearance of Form RI 20–63

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for reinstatement of an expired clearance for an information collection. Form RI 20–63, Decision About a Survivor Annuity for a Current Spouse, and its cover letters will be used by CSRS to provide information and a survivor benefits election opportunity to annuitants who have married after retirement. An expedited clearance is requested so we can resume post-retirement survivor elections for current spouses.

There are approximately 3,300 respondents for the RI 20–63 and 300 for the cover letter. It is estimated to take 20 minutes to complete the form. The annual burden is 1,188 hours (1,089 for the RI 20–63 and 99 for the cover letter).

A copy of this proposal is appended to this notice.

DATES: Comments on this proposal should be received by March 30, 1994. OMB has been requested to take action by April 4, 1994.

ADDRESSES: Send or deliver comments to—Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Group, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Chief, Forms Analysis & Design Section, (202) 606–0623.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Cover Letter for RI 20–63, Decision About A Survivor Annuity For A Current Spouse

Name:
Address:
CSA Number:

Dear : You may elect a survivor annuity for a spouse you married after retirement. You must make you election within two years of your marriage. Your election cannot be effective sooner than nine months after your marriage. Your annuity will be reduced to reflect the benefit payable to your spouse upon your death.

There will be two reductions to your annuity. The first reduction will be for the regular cost of a survivor benefit. The reduction will be eliminated should your marriage end. This reduction is currently $ per month and it will provide a survivor benefit of $ per month. The survivor benefit will increase with the cost-of-living.

The second reduction is permanent (even if your marriage ends) and represents the amount your annuity would have been reduced for the survivor benefit (plus interest) had you been married since the date of your retirement. As of , this amount is $ and the monthly reduction to pay it back is $. The reduction is based on your life expectancy and the amount you owe. These amounts will increase each month as principal and interest accumulates and as you age (that is on your birthday), up until the time we receive your election. Therefore, the amount shown below as your reduced gross annuity rate may be smaller if you delay your election.

Taken together, the reductions to provide a survivor benefit will reduce your current gross annuity of $ to $ per month.

We computed the above costs of the survivor benefit assuming you elect the maximum possible benefit. If you want to provide the maximum benefit, please complete and return the enclosed election within the time limit. You may elect a smaller survivor benefit at proportionately less cost. If you want to know the exact cost of a smaller benefit, enter the amount you want your spouse to receive each month below and return this letter to the Office of Personnel Management, Retirement Operations Center, ATTN: PRM-STOP, Boyers, PA 16017.

I want to provide a monthly survivor benefit of $xxxx. (Specify a whole dollar amount.)

If you are requesting information on the cost for a smaller benefit, do not complete the enclosed election at this time because an election cannot be revoked or changed once we receive it.

If you have not already submitted them, please furnish the following:

* If you were married at retirement and later divorced, a complete copy of your divorce decree, and related agreements or amendments.

* A copy of the marriage certificate for your current spouse.

If we can be of further assistance, please let us know.

Sincerely,

Benefits Specialist, Claims Correspondence Section, (412) 794–8442.

Enclosure

Cover Letter for RI 20–63 (If Annuitant Requests Information On Providing Less Than the Maximum Survivor Benefit)

Name:
Address:
CSA Number:

Dear : This is in response to your request for information on providing a monthly survivor benefit of $ for your spouse.

As explained in our previous letter, you may elect a survivor annuity for a spouse you married after retirement. You must take your election within two years of your marriage. Your election cannot be effective sooner than nine months after your marriage. Your

annuity will be reduced to reflect the benefit payable to your spouse upon your death.

There will be two reductions to your annuity. The first reduction will be for the regular cost of a survivor benefit. The reduction will be eliminated should your marriage end. This reduction is currently $ per month.

The second reduction is permanent (even if your marriage ends) and represents the amount your annuity would have been reduced for the survivor benefit (plus interest) had you been married since your date of retirement. As of , this amount is $ and the monthly reduction to pay it back is $. The reduction is based on your life expectancy and the amount you owe. These amounts will increase each month as principal and interest accumulates and as you age (that is, on your birthday), up until the time we receive your election. Therefore, the amount shown below as your reduced gross annuity rate may be smaller if you delay your election.

Taken together, the reductions to provide the above survivor benefit will reduce your current gross annuity of $ to $ per month.

If you want to provide a survivor benefit, please complete and return the enclosed election within the time limit. If we can be of further assistance, please let us know.

Sincerely,

Benefits Specialist,

Claims Correspondence Section, (412) 794-8442.

Enclosure

BILLING CODE 6325-01-M

Form Approved
OMB NO. 3206-0174

Decision About a Survivor Annuity for a Current Spouse

Important: Please print your name and provide your CSA number.	
Your name	CSA number
Please provide the following information about the spouse who is to receive the survivor benefit.	
Spouse's name	Social Security Number
Spouse's date of birth	Date of marriage *(your election must be received within two years of this date)*

Write your initials by your election and provide your signature:

_____ I elect the maximum survivor benefit.

_____ I elect a monthly survivor benefit of $_____ (Specify a whole dollar amount.)

I read and understood the information provided in the accompanying letter. I understand that this election cannot be changed or revoked once it is received by the Office of Personnel Management and that a portion of the reduction in my annuity is permanent.

Provide your signature for the above election	Date	Telephone number

If you decide not to provide a survivor benefit for your spouse: If, after reading the information in the accompanying letter, you decide not to provide a survivor benefit, please indicate your decision by writing your initials on the line below and provide your signature. Please note that you may change your mind and elect to provide a survivor benefit for your current spouse only if you again notify us in a signed notification that is received within two years after the date of your marriage.

_____ I have read the enclosed information and have decided not to provide a survivor benefit. My signature is provided below.

Signature	Date

Where to send this form: Send the completed election to: Office of Personnel Management, Retirement Operations Center, ATTN: PRM-STOP, Boyers, PA 16017.

The Privacy Act and Public Burden Statements are provided on the reverse side.

Previous editions are not usable

RI 20-63
Rev. April 1994

BILLING CODE 6325-01-C

Privacy Act and Public Burden Statements

Chapter 83, title 5, U.S. Code, authorizes solicitation of this information. The data you furnish will be used to determine your eligibility to receive a reduced annuity and to give a survivor annuity to your spouse.

This information may be shared and is subject to verification, via paper, electronic media, or through the use of computer matching programs, with national, state, local, or other charitable or social security administrative agencies to determine and issue benefits under their programs, to obtain information necessary for determination or continuation of benefits under this program, or to report income for tax purposes. It may also be shared and verified, as noted above, with law enforcement agencies when they are investigating a violation or potential violation of civil or criminal law.

Provision of this information is voluntary; however, failure to supply all of the requested information may result in an inability to reduce your annuity for your spouse.

We also request that you provide your spouse's Social Security number so that it may be used as an individual identifier in the Civil Service Retirement System. Executive Order 9397, dated November 22, 1943, allows Federal agencies to use the Social Security number as an individual identifier to distinguish between people with the same or similar names.

We think this form takes an average 20 minutes per response to complete, including the time for reviewing instructions, getting the needed data, and reviewing the completed form. Send comments regarding our estimate or any other aspect of this form, including suggestions for reducing completion time, to the Office of Management and Budget, Paperwork Reduction Project, (3206–0174), Washington, DC 20503.

[FR Doc. 94–7044 Filed 3–24–94; 8:45 am]

BILLING CODE 6325–01–M

Federal Prevailing Rate Advisory Committee Cancellation of Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the meeting of the Federal Prevailing Rate Advisory Committee scheduled for Thursday, March 24, 1994, has been canceled.

Information on other meetings can be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: March 17, 1994.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 94–7045 Filed 3–24–94; 8:45 am]

BILLING CODE 6325–01–M

National Partnership Council Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: The Office of Personnel Management (OPM) announces the sixth meeting of the National Partnership Council (the Council). Notice of this meeting is required under the Federal Advisory Committee Act.

TIME AND PLACE: The Council will meet on April 12, 1994, at 2 p.m., in the auditorium at the Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Washington, DC 20415–0001. The auditorium is located on the ground level.

TYPE OF MEETING: This meeting will be open to the public. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact OPM to obtain appropriate accommodations.

POINT OF CONTACT: Douglas K. Walker, Office of Communications, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 5F12, Washington, DC 20415–0001, (202) 606–1800.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss the Council's structure and its work plans for 1994. In addition, the Council will receive a report on training resources related to labor-management partnerships, such as consensual methods of dispute resolution and interest-based bargaining approaches.

PUBLIC PARTICIPATION: We invite interested persons and organizations to submit written comments or recommendations. Mail or deliver your comments or recommendations to Mr. Douglas K. Walker at the address shown above. Comments should be received by April 6, in order to be considered at the April 12, meeting.

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 94–7043 Filed 3–24–94; 8:45 am]

BILLING CODE 6325–01–M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Keck Property, Riverside County, CA

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Keck, located in La Quinta, Riverside County, California, is affected by Section 10 of the Coastal Barrier Improvement Act of 1990 as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of all or any portion of this property may be mailed or faxed to the RTC until June 23, 1994.

ADDRESSES: Copies of detailed descriptions of this property, including maps, can be obtained from or are available for inspection by contacting the following person:

Mr. V. Jackson Carney, III, Resolution Trust Corporation, c/o Landmark Land Companies, 2500 Landmark Drive, LaPlace, LA 70068, (504) 466–7469; Fax (504) 651–6057.

SUPPLEMENTARY INFORMATION: The Keck property is located between 58th Avenue and 62nd Avenue in La Quinta, Riverside County, California, east of Jefferson Street and west of Jackson Street. The site contains habitat for Federally-listed endangered species and has archeological value. The Keck property consists of approximately 1287.29 acres of undeveloped and agricultural land near the Torres-Martinez Indian Reservation and immediately west of Lake Cahuilla County Park. The site is also near lands managed by the Bureau of Land Management and Water and Power Resources. This property is covered property within the meaning of Section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Written notice of serious interest in the purchase or other transfer of all or any portion of this property must be received on or before June 23, 1994 by the Resolution Trust Corporation at the appropriate address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;
2. Agencies or entities of State or local government; and
3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest must be submitted in the following form:

Notice of Serious Interest

Re: [insert name of property]
Federal Register Publication Date: _____

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in the Coastal Barrier Improvement Act of 1990, Public Law 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)), including, for qualified organizations, a determination letter from the United States Internal Revenue Service

regarding the organization's status under section 501(c)(3) of the U.S. Internal Revenue Code (26 U.S.C. 170(h)(3)).

3. Brief description of proposed terms of purchase or other offer for all or any portion of the property (e.g., price, method of financing, expected closing date, etc.).

4. Declaration of entity that it intends to use the property for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes (12 U.S.C. 1441a–3(b)(4)), as provided in a clear written description of the purpose(s) to which the property will be put and the location and acreage of the area covered by each purpose(s) including a declaration of entity that it will accept the placement, by the RTC, of an easement or deed restriction on the property consistent with its intended conservation use(s) as stated in its notice of serious interest.

5. Authorized Representative (Name/Address/Telephone/Fax).

List of Subjects: Environmental protection.

Dated: March 21, 1994.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 94–7055 Filed 3–24–94; 8:45 am]

BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33783; File No. SR–NASD–94–07]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to an Extension and Expansion of a Position Limit Hedge Exemption Pilot Program

March 18, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 9, 1994, the National Association of Securities Dealers, Inc. ("NASD"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I and II below, which items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Section 3 of Appendix E ("Section 3") to the NASD's Rules of Fair Practice ("Rules") to extend, until December 31, 1995, the NASD's pilot program for exemptions from equity option position limits for certain hedged positions ("hedge exemption pilot program"). The NASD also proposes to amend section 3 of the Rules to expand the hedge exemption pilot program to provide that the underlying hedged equity position may be comprised of securities readily convertible into or economically equivalent to the stock underlying the corresponding hedging options position. In addition, the NASD proposes to add a new example to the list of examples contained at the end of section 3(a) of the Rules to illustrate the operation of the position limit hedge exemption. The text of the proposed rule change is available at the Office of the Secretary, NASD, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On February 9, 1990, the Commission approved an NASD proposal to implement a two-year pilot program during which certain fully hedged equity option positions would be automatically exempt from established position and exercise limits.[1] Specifically, the hedge exemption pilot program provides for an automatic exemption from equity option position limits for accounts that have established one of the four most commonly used hedged positions on a limited one-for-one basis (i.e., the number of shares represented by one options contract). The exempted positions are: (1) Long stock and short calls; (2) long stock and long puts; (3) short stock and long calls; and (4) short stock and short puts. Under the hedge exemption pilot program, the largest options position (combining hedged and unhedged positions) that may be established may not exceed twice the basic position limit.[2] In addition, the hedge exemption pilot program does not change the exercise limits contained in the Rules.[3] Therefore, market participants are allowed to exercise, during any five consecutive business days, the same number of options contracts set forth as the position limit for that option, including those options positions that are hedged.

The NASD is proposing three amendments to the hedge exemption pilot program. First, because the hedge exemption pilot program expired on February 9, 1992, the NASD is proposing to re-implement the pilot program until December 31, 1995. In addition, in order to avoid future lapses in the hedge exemption pilot program, the NASD proposes to incorporate this expiration date into its Rules in a new subsection (c) to section 3.

Second, the NASD proposes to amend Section 3 of the Rules to expand the hedge exemption pilot program to provide that in addition to stock, the underlying hedged security position may be comprised of securities readily convertible into or economically equivalent to the security underlying the corresponding hedging options position. The NASD believes that expanding the hedge exemption pilot program in this manner is appropriate and consistent with the Act because it would allow investors to hedge instruments that are economically equivalent to stocks more efficiently and effectively. Specifically, because the NASD believes that the value of such a security likely will fluctuate in tandem with the value of the security into which it is convertible or economically equivalent, the NASD believes investors with positions in these securities should be able to hedge their positions with equity options to the same extent that investors with long or short positions in the underlying security can.[4] In

[1] See Securities Exchange Act Release No. 27697 (February 9, 1990), 55 FR 5535 (February 15, 1990). Position limits impose a ceiling on the number of equity option contracts in each class on the same side of the market (i.e., aggregating long calls and short puts, and long puts and short calls) that can be held or written by an investor or group of investors acting in concert. Exercise limits restrict the number of options contracts which an investor or group of investors acting in concern can exercise within five consecutive business days.

[2] See Section 3 of the NASD Rules.

[3] See Section 4 of Appendix E of the Rules.

[4] In this connection, the NASD will determine on a case-by-case basis whether an instrument that is being used as the basis for the underlying hedged position is readily convertible into or economically equivalent to the security underlying the corresponding options position. Further, the NASD will find that an instrument that is not presently convertible into a security, but which will be at a future date, is not a "convertible" security for purposes of the hedge exemption pilot program. In addition, the NASD notes that if a convertible security used to hedge an options position is called for redemption by the issuer, the security would have to be converted into the underlying security

Continued

addition, because the hedge exemption pilot program requires the positions in the convertible or economically equivalent securities and the corresponding options to be fully hedged, the NASD believes that the expansion of the pilot program will not significantly increase concerns regarding intermarket manipulations or disruptions of either the options markets or the underlying stock market.

Third, the NASD proposes to add a new example to the list of examples contained at the end of Section 3 of the Rules to illustrate the operation of the position limit hedge exemption. The NASD believes that this example will serve to avoid investor confusion concerning the hedge exemption pilot program.

The NASD believes that the proposed rule change is consistent with section 15A(b)(6) of the Act [5] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the NASD believes that the proposed extension and expansion of the hedge exemption pilot program may increase the depth and liquidity of the options markets by permitting investors to hedge greater amounts of stock than would otherwise be the case without the hedge exemption. At the same time, the NASD represents that the higher position limits available by virtue of the hedge exemption pilot program have not resulted in disruptions of the underlying stock markets due to restrictions in those markets and the NASD's surveillance program. In this connection, the NASD will continue to monitor the use of the position limit hedge exemption to ensure that NASD members are complying with the requirements of the exemption. The NASD also will continue to monitor the market effects, if any, from the position limit hedge exemptions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received by the NASD with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act.

The Commission finds that the proposed rule change to extend the hedge exemption pilot program is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 15A(b)(6) thereunder.[6] Specifically, the Commission concludes, as it did when originally approving the hedge exemption pilot program that providing for increased position and exercise limits for equity options in circumstances where those excess positions are fully hedged with offsetting stock positions will provide greater depth and liquidity to the market and allow investors to hedge their stock portfolios more effectively, without significantly increasing concerns regarding intermarket manipulations or disruptions of either the options market or the underlying stock market.

In addition, with respect to the NASD's proposal to expand the types of securities eligible to serve as the basis for the underlying hedge position to include convertible securities and securities economically equivalent to the stock underlying the corresponding hedging options position, the Commission continues to believes, as it did in approving similar proposals by the options exchanges,[7] that such expansion is consistent with the Act because it will allow investors to use instruments that are economically equivalent to stocks more efficiently and effectively for purposes of hedging their equity options positions.[8] Specifically, the Commission concurs with the NASD's belief that because the value of a convertible security or a security economically equivalent to the stock underlying a corresponding hedging options position likely will fluctuate in tandem with the value of the security that it is convertible into or economically equivalent to, investors with positions in such securities should be able to hedge their positions in equity options with those securities to the same extent that investors with long or short positions in the underlying securities can. Moreover, as with the original hedge exemption pilot program,[9] the Commission believes the expansion of the pilot program in this manner likely will enhance the depth and liquidity in the options markets. In addition, because the hedge exemption pilot program still requires the positions in the securities and the corresponding options to be fully hedged, the Commission believes the expansion will not significantly increase concerns regarding intermarket manipulation or disruption of either the options markets or the underlying stock market.

With respect to the proposed example to be added to section 3 of the Rules, the Commission believes the example may serve to avoid investor confusion concerning the hedge exemption pilot program.

The Commission also notes that before the hedge exemption pilot program can be approved on a permanent basis, the NASD Must provide the Commission with a report on the operation of the pilot program. Specifically, the NASD must provide the Commission with details on (1) the frequency with which the exemptions have been used; (2) the types of investors using the exemptions; (3) the size of the positions established pursuant to the hedge exemption pilot program; (4) what types of convertible or economically equivalent securities are being used to hedge positions and how frequently such securities have been used to hedge; (5) whether the NASD has received any complaints on the operation of the hedge exemption pilot program; (6) whether the NASD has taken any disciplinary action against, or commenced any investigations, examinations, or inquiries concerning, any of its members for any violation of any term or condition of the hedge exemption pilot program; (7) the market impact, if any, of the hedge exemption pilot program; and (8) how the NASD has implemented surveillance procedures to ensure compliance with the terms and conditions of the hedge exemption pilot program. In addition, the Commission expects the NASD to inform the Commission of the results of any surveillance investigations undertaken for apparent violations of the provisions of the hedge exemption pilot program.

immediately or the corresponding option position reduced accordingly.

[5] 15 U.S.C. 78o–3(b)(6) (1988).

[6] *Id.*

[7] See, e.g., Securities Exchange Act Release No. 32904 (September 14, 1993), 58 FR 49339.

[8] See supra note 4.

[9] See supra note 1.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** so that the hedge exemption pilot program can be re-implemented without further delay and to help avoid any potential investor confusion concerning the availability of the hedge exemption as a result of the lapse of the pilot program. The Commission notes that the NASD has not experienced any significant problems with the hedge exemption pilot program since its inception and that the NASD will continue to monitor the pilot program to ensure that no problems arise. Moreover, no adverse comments have been received by the NASD concerning the hedge exemption pilot program since its implementation. Additionally, the proposal to expand the hedge exemption pilot program to include convertible securities and securities economically equivalent to the stock underlying the corresponding hedging options position is substantively similar to proposals previously approved by the Commission for the options exchanges.[10] Finally, the proposed example to be added to section 3 of the Rules merely serves to clarify the operation of the hedge exemption pilot program and is not a substantive rule change. As a result, because of the importance of maintaining the quality and efficiency of the securities markets, the Commission believes good cause exists for approving the extension and expansion of the NASD's hedge exemption pilot program on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–94–07 and should be submitted by April 15, 1994.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (File Nos. SR–NASD–94–07), is approved and, accordingly, the hedge exemption pilot program as expanded herein, is extended until December 31, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–7077 Filed 3–24–94; 8:45 am]

BILLING CODE 8010–01–M

[10] See *supra* note 7.

[Release No. 34–33779; File No. SR–NYSE–93–38]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Additions to the "List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A"

March 17, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 21, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

This proposal would revise the Rule 476A Violations List for imposition of fines for minor violations of rules and/or policies by adding to the list Exchange Rules 304(h)(2), 345.12, 346(b) and (e), 346(f), 352(b) and (c), 440C and 472(c).[1]

[11] 15 U.S.C. 78s(b)(2) (1982).

[12] 17 CFR 200.30–3(a)(12) (1992).

[1] The NYSE also has requested approval, under Rule 19d-1(c)(2), 17 CFR 240.19d-1(c)(2), to amend its Rule 19d-1 Minor Rule Violation Enforcement and Reporting Plan to include Exchange Rules 304(h)(2), 345.12, 346(b) and (e), 346(f), 352(b) and (c), 440C and 472(c). See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Diana Luka-Hopson, Branch Chief, Exchange Regulation, Division of Market Regulation, Commission, dated October 20, 1993.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 476A [2] provides that the Exchange may impose a fine ranging from $500 to $2,500 on an individual, and a fine ranging from $1,000 to $5,000 on a member organization for a minor violation of certain specified Exchange rules.

The purpose of the Rule 476A procedure is to provide for a response to a rule violation when a meaningful sanction is appropriate but when initiation of a disciplinary proceeding under Rule 476 is not suitable because such a proceeding would be more costly and time-consuming than would be warranted given the minor nature of the violation. Rule 476A provides for an appropriate response to minor violations of certain Exchange rules while preserving the due process rights

[2] Rule 476A was approved by the Commission on January 25, 1985 in Securities Exchange Act Release No. 21688, 50 FR 5025 (February 5, 1985). Subsequent additions of rules to the Rule 476A Violations List were made in: Securities Exchange Act Release No. 22037 (May 14, 1985), 50 FR 21008 (May 21, 1985); Securities Exchange Act Release No. 22415 (September 17, 1985), 50 FR 38600 (September 23, 1985); Securities Exchange Act Release No. 22490 (October 1985), 50 FR 41084 (October 8, 1985); Securities Exchange Act Release No. 23104 (April 11, 1986), 51 FR 13307 (April 18, 1986); Securities Exchange Act Release No. 24985 (October 5, 1987), 52 FR 41643 (October 29, 1987); Securities Exchange Act Release No. 25763 (May 27, 1988), 53 FR 20925 (June 7, 1988); Securities Exchange Act Release No. 27878 (April 4, 1990), 55 FR 13345 (April 10, 1990); Securities Exchange Act Release No. 28003 (May 8, 1990), 55 FR 20004 (May 14, 1990); Securities Exchange Act Release No. 28505 (October 2, 1990), 55 FR 41288 (October 10, 1990); Securities Exchange Act Release No. 28995 (March 21, 1991), 56 FR 12967 (March 28, 1991); Securities Exchange Act Release No. 30280 (January 22, 1992), 57 FR 3452 (January 29, 1992); Securities Exchange Act Release No. 30536 (March 31, 1992), 57 FR 12357 (April 9, 1992); and Securities Exchange Act Release No. 32421 (June 7, 1993), 58 FR 32973 (June 14, 1993).

of the party accused through specified, required procedures. The list of rules which are eligible for 476A procedures specifies those rule violations which may be the subject of fines under the rule and also includes a schedule of fines.

In SR–NYSE–84–27, which initially set forth the provisions and procedures of the Rule 476A, the Exchange indicated it would amend the list of rules from time to time, as it considered appropriate, in order to phase-in the implementation of Rule 476A as experience with it was gained. The Exchange's regulatory divisions have amended the list since its initial implementation to include either existing rules or newly approved ones, which are appropriate for inclusion in this particular disciplinary process when violations occur.

The Exchange is presently seeking approval to add certain Exchange rules to the list of rules subject to possible imposition of fines under Rule 476A procedures. The types of rules covered generally include reporting, required approvals, record retention and conduct of accounts for which determinations of violations can be made objectively. They are as follows:

• *Rule 304(h)(2)*—Requires member organizations to supply the Exchange with information relating to the existence of any statutory disqualification as defined in the Act to which an approved person or any person associated with the approved person may be subject.

• *Rule 345.12*—Requires applications (Form U–4) for all natural persons required to be registered with the Exchange to be filed upon the candidate's employment and to be kept current.

• Rule 346(b) and (3)—Rule 346(b) requires members, allied members and employees of member organizations to receive prior written consent of their employer to engage in any other business activity or to be employed or compensated by any other person. Rule 346(e) provides that persons delegated supervisory responsibilities must devote their full time to the business of the member organization during business hours, unless otherwise permitted by the Exchange (Rule 346.10).

• *Rule 346(g)*—Provides that no member, member organization, allied member, approved person or employee of any person in a control relationship with a member or member organization shall be associated with any person subject to a statutory disqualification as defined in the Act.

• *Rule 352(b) and (c)*—Prohibits a member, member organization, allied member, registered representative or officer from guaranteeing any customer against loss in any account and from sharing in profits or losses in a customer's account.

• *Rule 440C*—States that no member or member organization should "fail to deliver" against a short sale until a diligent effort has been made to borrow necessary securities to make delivery.

• *Rule 472(c)*—Requires members and member organizations to retain communications with customers and the public (*e.g.*, advertisements, research reports, sales literature) for at least three years. The communications must also contain the name of the person who prepared the material, the name of the person approving its issuance, and be readily available to the Exchange upon request.

2. *Statutory Basis*

The proposed rule change will advance the objectives of section 6(b)(6) of the Act in that it will provide a procedure whereby members, allied members, employees and member organizations can be "appropriately disciplined" in those instances when a rule violation is minor in nature, but a sanction more serious than a warning or cautionary letter is appropriate. The proposed rule change provides a fair procedure for imposing such sanctions, in accordance with the requirements of sections 6(b)(7) and 6(d)(1) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–93–38 and should be submitted by April 15, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–7052 Filed 3–24–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20149; 812–8664]

Aetna Series Fund Inc., et al.; Application

March 18, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Aetna Series Fund, Inc. (the "Company"), Aetna Capital Management, Inc. (the "Underwriter") and Aetna Life Insurance and Annuity Company (the "Adviser").

RELEVANT ACT SECTION: Order requested under section 6(c) of the Act for an exemption from sections 2(a)(32), 2(a)(35), 18(f)(1), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order that would permit certain investment companies to issue

multiple classes of securities representing interests in the same portfolio and assess and, under certain circumstances, waive a contingent deferred sales charge ("CDSC") on certain redemptions of shares.

FILING DATES: The application was filed on November 2, 1993, and amended on January 12, 1994. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 12, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, Aetna Life Insurance and Annuity Company, 151 Farmington Avenue, Hartford, Connecticut 06830.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 272–3809, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Company is an open-end management investment company registered under the Act and organized as a Maryland corporation. The Company's existing and future series are referred to as the "Funds." The Adviser provides investment advisory and administrative services to each of the Funds.[1] The Underwriter acts as a principal underwriter of the Funds' shares. Each of the Funds has a single class of shares that is currently offered to investors at net asset value without a sales load.

A. Multi Class System

1. Applicants request relief, on behalf of themselves, any entity controlling, under common control with or controlled by the Underwriter or the Adviser that may in the future serve as a Fund's underwriter or investment adviser, and any registered investment companies that may in the future be advised or distributed by the Adviser or Underwriter. Applicants propose to establish a multiple class distribution system to enable each of the Funds to offer investors the option of purchasing classes of shares that would either be subject to: (a) A conventional front-end sales load, (b) a non-rule 12b–1 service fee, (c) a rule 12b–1 distribution fee, (d) a CDSC, (e) a combination of front-end sales load, service fee, distribution fee and/or CDSC, or (f) no sales charge. Applicants currently contemplate offering only two classes of shares.

2. Under the proposed multi-class distribution system, the Funds would continue to offer the current shares as "Class A shares." Class A shares would be distributed with no sales charge, distribution fee, or service fee to: (i) Certain corporate retirement plans as determined by the board of directors, (ii) salaried employees and persons retired from salaried positions with the Adviser and its affiliates, (iii) insurance companies (including separate accounts), registered investment companies, investment advisers and broker-dealers acting for their own account and other institutions as determined by the board of directors, (iv) current shareholders at the time of first offering of Class B shares as long as they maintain a shareholder account (*i.e.* current shareholders would be eligible to make future purchases of Class A shares upon the commencement of the Multi-Class Distribution System); and (v) any other persons, organization, or affinity groups identified by the board of directors, eligible to acquire shares, pursuant to which the sale of shares involves minimal sales expense to the Company.

3. The deferred option or "Class B shares" will be subject to a rule 12b-1 distribution fee, non rule 12b-1 service fee and a CDSC. Class B shares of each Fund would pay a service fee and a distribution fee pursuant to a shareholder services plan and a 12b-1 plan. Class B shares would be sold to all other investors.

4. The Funds may in the future establish a class of shares that is only offered to the following categories of investors ("Institutional Class"): (a) Unaffiliated benefit plans; (b) tax-exempt retirement plans of the Adviser and its affiliates; (c) unit investment trusts sponsored by the Adviser or its affiliates; (d) banks and insurance companies purchasing for their own account; (e) investment companies not affiliated with the Adviser and (f) endowment funds for non-profit organizations. The unaffiliated benefit plans must meet certain asset levels as established by the Funds and have a separate trustee for the plan who is vested with investment discretion as to plan assets. Applicants will exclude self-directed plans from this category. The offerees of the tax-exempt plans in category (b) will be qualified defined contribution plans maintained pursuant to section 401(a) of the Internal Revenue Code (the "Code") by the Adviser and its affiliates for the benefit of employees. The UITs in category (c) will, under current regulations, require a separate order of exemption pursuant to section 6(c) of the Act in order to invest in shares of the Funds. The entities in categories (d), (e) and (f) will not be affiliated with the Adviser. These offerees will have in common the essential feature of substantial assets under management and investment decision-making by institutional management on behalf of the entity with respect to the purchase of Institutional Class shares. Thus, these entities could not be used as a conduit for individuals investing in Institutional Class shares, and no individual would be the direct owner of Institutional Class shares. Investors eligible to purchase Institutional Class shares would be sold only Institutional Class shares, rather than any other class of shares offered by the Funds.

5. Operating expenses, which are attributable to all classes, will be allocated daily to each class of shares based on the relative net assets in each class at the beginning of the day. Expenses that have a greater cost for one class than another (*i.e.*, distribution fees, service fees and possible transfer agent fees, registration fees, directors fees, administrative expenses, and legal fees and expenses) will be charged separately to each class. Accordingly, the net income attributable to and the dividends payable on Class B shares would be lower than the net income attributable to and the dividends payable on Class A shares.

6. Shares of one class automatically may convert to another class with lower ongoing distribution or shareholder service fees after a specified period of time. Shares purchased through the reinvestment of dividends and other

[1] In the case of Aetna International Growth Fund, the Adviser has entered into a subadvisory arrangement with the Underwriter. Applicants contemplate that certain of the five new series of the Funds may enter into sub-advisory arrangements with advisory entities affiliated with the Adviser.

distributions paid in respect of a class would convert on a *pro rata* basis, determined by the ratio that the shareholder's shares converting to another class bears to the shareholder's total shares not acquired through dividends and distributions.

7. Applicants anticipate that each class of shares may be exchanged for shares of the same class in another Fund to the extent that the shareholder would have been eligible to purchase the shares acquired in the exchange. The exchange privileges will comply with rule 11a-3 under the Act.

B. The CDSC

1. Applicants expect that the CDSC applicable to Class B shares will be 1% for redemptions made during the first year after purchase to .25% for redemptions made during the fourth year after purchase. The amount of the CDSC will be calculated as the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase or at the time of redemption. The CDSC schedule of any particular Fund or class thereof may vary. The sum of any CDSC, front-end sales charge and asset based sales charge will not exceed the maximum sales charge permissible under Article III, Section 26(d) of the NASD's Rule of Fair Practice.

2. The CDSC will not be imposed on redemptions of shares derived from the reinvestment of distributions. No CDSC will be imposed on an amount that represents an increase in the value of the shareholder's account resulting from capital appreciation above the amount paid for shares purchased during the CDSC period. Furthermore, the CDSC will not be imposed on redemptions of shares redeemed after a specified period after purchase. In determining whether a CDSC is applicable, it will be assumed that a redemption is made first of shares representing capital appreciation, second of shares derived from reinvestment of dividends and capital gains distributions, and finally, of other shares held by the shareholder for the longest period of time. This will result in the charge, if any, being imposed at the lowest possible rate.

3. Applicants propose to waive or reduce the CDSC: (a) On redemptions following the death or disability, as defined in section 72(m)(7) of the Code, of a shareholder, if redemption is made within one year of death or disability of a shareholder, as relevant; (b) in connection with certain distributions from an Individual Retirement Account ("IRA"), or other qualified retirement plan; (c) in connection with redemptions of shares purchased by active or retired officers, directors or trustees, partners and employees of the Funds, the Underwriter or affiliated companies, by members of the immediate families of such persons, by dealers having a sales agreement with the Underwriter, by any state, country or city, or any instrumentality, department, authority or agency thereof and by trust companies and bank trust departments which are holding shares in a fiduciary capacity; (d) in connection with redemptions of shares purchased by beneficiaries of Aetna Life, disability and health insurance policies; (e) in connection with redemptions of shares made pursuant to a shareholder's participation in any systematic withdrawal plan adopted by a Fund; (f) for a shareholder with an account of $1 million or more; (g) in connection with redemptions effected by advisory accounts managed by the Adviser; and (h) involuntary redemptions.

4. If the Funds waiver or reduce the CDSC, such waiver or reduction will be applied uniformly to all offerees in the specified class. The Funds may provide a *pro rata* credit, to be paid by the distributor, for any CDSC paid in connection with a redemption of shares followed by a reinvestment effected within 365 days, or shorter, of the redemption.

Applicants' Legal Analysis

1. Applicants request an exemption under section 6(c) of the Act, that would exempt the Funds from sections 18(f)(1), 18(g) and 18(i) of the Act to permit the issuance of an unlimited number of classes. Applicants believe that the multi-class distribution system does not raise any of the concerns that prompted the adoption of section 18 (*i.e.*, underfunded debt, preference stocks, and convertible securities). The proposal does not involve borrowings and does not affect the Fund's existing assets or reserves. In addition, the proposed arrangement will not increase the speculative character of the shares of the Funds.

2. Applicants also request an exemption under section 6(c) from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act, and rule 22c–1 thereunder, to the extent necessary to permit the Funds to assess, waive, reduce or defer a CDSC with respect to certain redemptions of shares. The applicants believe that the imposition of the CDSC on a class of shares is fair and in the best interests of their shareholders, because the shares would have the advantage of greater investment dollars working for them from the time of their purchase of such shares of the Funds than if a sales load were imposed at the time of purchase.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund, and be identical in all respects, except as set forth below. The only differences among the classes of shares of the Fund will relate solely to: (a) Different expenses which the board of directors of a Fund determines to allocate to a specific class ("class specific expenses"), which are limited to: (i) Transfer agent fees; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses and proxies to current shareholders of a specific class; (iii) Blue Sky registration fees incurred by a class of shares; (iv) SEC registration fees incurred by a class of shares; (v) the expense of administrative personnel and services required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating solely to one class of shares; and (vii) directors; fees incurred as a result of issues relating to one class of shares; (viii) other expenses that are subsequently identified and determined to be properly allocated to a particular class of shares which shall be approved by the SEC pursuant to an amended order; (b) expenses assessed to a class pursuant to a 12b–1 plan and shareholder services plan (c) the fact that the classes will vote separately with respect to a Fund's rule 12b–1 distribution plan, except as provided in condition 7 below; (d) the different exchange privileges of each class of shares; (e) the fact that only certain classes may have a conversion feature; and (f) the designation of each class of shares of a Fund.

2. The directors of the Company, including a majority of the independent directors, shall have approved the multi-class distribution system, prior to the implementation of the multi-class distribution system. The minutes of the meetings of the directors of the Company regarding the deliberations of the directors with respect to the approvals necessary to implement the multi-class distribution system will reflect in detail the reasons for determining that the proposed multi-class distribution system is in the best interests of both the Funds and their respective shareholders.

3. The initial determination of the class-specific expenses, if any, that will be allocated to a particular class of a

Fund and any subsequent changes thereto will be reviewed and approved by a vote of the directors of the affected Fund, including a majority of the independent directors. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet class-specific expenses shall provide to the directors, and the directors shall review, at least quarterly, a written report of the amounts so expended and the purpose for which the expenditures were made.

4. The shareholder services plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1.

5. On an ongoing basis, the directors of the Company, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts between or among the interests of the classes of shares offered. The directors, including a majority of the independent directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Adviser and the Underwriter will be responsible for reporting any potential or existing conflicts to the directors. If a conflict arises, the Adviser and the Underwriter at their own costs will remedy such conflict up to and including establishing a new registered management investment company.

6. Any class of shares ("Purchase Class") with a conversion feature will convert into another class of shares ("Target Class") on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the Target Class shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

7. If a Fund implements any amendment to its rule 12b–1 plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by the Target Class shares under the plan, existing Purchase Class shares will stop converting into Target Class unless the Purchase Class shareholders, voting separately as a class, approve the proposal. If the Purchase Class shareholders fail to approve the proposal, the directors shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to Target Class as it existed prior to implementation of the proposal, no later than the date such shares previously were scheduled to convert into Target Class. If deemed advisable by the directors to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class ("New Purchase Class"), identical to existing Purchase Class shares in all material respects except that New Purchase Class will convert into New Target Class. New Target Class or New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the directors reasonably believe will not be subject to federal taxation. In accordance with condition 5, any additional cost associated with the creation, exchange, or conversion of New Target Class or New Purchase Class shall be borne solely by the Adviser and the Underwriter. Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

8. The directors of the Company will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the directors to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent directors in the exercise of their fiduciary duties.

9. Dividends paid by a Fund with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that fee payments made under 12b–1 plans relating to each respective class of shares, will be borne exclusively by that class and except that any other class-specific expenses, including transfer agency fees relating to a particular class will be borne exclusively by such class.

10. The methodology and procedures for calculating the net asset value and dividends and distributions of the classes and the proper allocation of expenses between the classes has been reviewed by an expert (the "Independent Examiner") who has rendered a report to the applicants, which has been provided to the staff of the SEC, stating that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Independent Examiner, or an appropriate substitute Independent Examiner, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Independent Examiner shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Independent Examiner with respect to such reports, following request by the Funds which the Funds agree to make, will be available for inspection by the SEC staff upon the written request for such work papers by a senior member of the Division of Investment Management or of a Regional Office of the Commission, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Independent Examiner is a "Special Purpose" report on the "Design of a System" as defined and described in SAS No. 44 of the AICPA, and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

11. The applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the classes of shares and the proper allocation of expenses between such classes of shares, and this representation has been concurred with by the Independent Examiner in the initial report referred to in condition (10)

above and will be concurred with by the Independent Examiner, or an appropriate substitute Independent Examiner, on an ongoing basis at least annually in the ongoing reports referred to in condition (10) above. Applicants will take immediate corrective action if this representation is not concurred in by the Independent Examiner, or appropriate substitute Independent Examiner.

12. The prospectuses of the Funds will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund shares may receive different levels of compensation for selling one particular class of shares over another in a Fund.

13. The Underwriter will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to such standards. Such compliance standards will require that all investors eligible to purchase Institutional Class shares be sold only Institutional Class shares, rather than any other class of shares offered by the Funds.

14. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the directors of the Funds with respect to the multi-class distribution system will be set forth in guidelines which will be furnished to the directors.

15. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares, other than the Institutional Class, in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The Institutional Class will be offered solely pursuant to a separate prospectus. The prospectus for the Institutional Class will disclose the existence of the Fund's other classes, and the prospectus for the Fund's other classes will disclose the existence of the Institutional Class and will identify the persons eligible to purchase shares of such class. Each Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to the classes of shares of such fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares (other than the Institutional Class), it will disclose the expenses and/or performance data applicable to all classes of shares. Advertising materials reflecting the expenses and performance data for the Institutional Class will be available only to investors eligible to invest in shares of the Institutional Class. The information provided by applicants for publication in any newspaper or similar listing of the Funds' net asset values and public offering prices will present each class of shares separately (other than the Institutional Class).

16. The applicants acknowledge that the grant of the exemptive order requested by the application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that the Funds may make pursuant to its rule 12b–1 plans or shareholder services plans in reliance on the exemptive order.

17. The applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–7080 Filed 3–24–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33782; File No. SR–ICC–94–02]

Self-Regulatory Organizations; The Intermarket Clearing Corporation; Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Rules Regarding Insider Trading Prohibitions

March 17, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 25, 1994, The Intermarket Clearing Corporation ("ICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been primarily prepared by ICC. On February 25, 1994, ICC submitted an amendment to conform the proposed rule change to comments received by ICC from the staff of the Commodity Futures Trading Commission ("CFTC").[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend ICC's Rules prohibiting insider trading to conform with recent amendments to Regulation 1.59[3] of the CFTC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change will amend ICC's Rules prohibiting the misuse of material, nonpublic information to conform with recent amendments to CFTC Regulation 1.59. In general, conforming amendments to ICC's Rules are necessary because Regulation 1.59, as amended: (1) Changes certain of the definitions that are effective for purposes of the insider trading rules of self-regulatory organizations ("SROs"); and (2) requires SROs to adopt and maintain rules prohibiting trading in commodity interests traded on or cleared by linked exchanges of such SROs. In addition, amendments to ICC's Rules are necessary to ensure the conformity of references to the term "non-public."

Conforming references to the term "non-public" have been made throughout Rule 222 and reference is made in Rule 222 to the Interpretations and Policies following Rule 222. In addition, the scope of ICC's insider trading prohibition is extended to reach any commodity interest traded on or

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from Robert S. Steigerwald [Attorney], ICC, to Jerry W. Carpenter, Chief, Branch of Equity and Derivative Clearing Agency Regulation, Division of Market Regulation, Commission (February 25, 1994).

[3] 17 CFR 1.59.

cleared by any linked exchange of ICC.[4] At present, there are no commodity interests that are traded on or cleared by any linked exchange of ICC. The definitions of the terms "linked exchange," "material information," "non-public information," and "related commodity interest" have been amended in Interpretations and Policies .01 of Rule 222 to conform with amendments to CFTC Regulation 1.59.

ICC believes the proposed amendments are consistent with the requirements of section 17A(b)(3)(F)[5] of the Act in that the amendments will protect investors and the public interest by extending the reach of ICC's prohibitions on the misuse of material, non-public information.

B. Self-Regulatory Organization's Statement on Burden on Competition

ICC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments concerning the proposed rule change were not and are not intended to be solicited in connection with the proposed rule change, and none have been received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(i)[6] of the Act and pursuant to Rule 19b-4(e)(1)[7] in that it affects the interpretation with respect to the meaning, administration, and enforcement of ICC's existing rules relating to insider trading prohibitions At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of ICC. All submissions should refer to File No. SR–ICC–94–02 and should be submitted by April 15, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–7076 Filed 3–24–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20147; 812–8194]

Merrill Lynch Adjustable Rate Securities Fund, Inc., et al.; Application

March 18, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Merrill Lynch Adjustable Rate Securities Fund, Inc., Merrill Lynch Americas Income Fund, Inc., Merrill Lynch Basic Value Fund, Inc., Merrill Lynch California Municipal Series Trust, Merrill Lynch Capital Fund, Inc., Merrill Lynch Consults International Portfolio, Merrill Lynch Corporate Bond Fund, Inc., Merrill Lynch Developing Capital Markets Fund, Inc., Merrill Lynch Dragon Fund, Inc., Merrill Lynch EuroFund, Merrill Lynch Federal Securities Trust, Merrill Lynch Fundamental Growth Fund, Inc., Merrill Lynch Fund For Tomorrow, Inc., Merrill Lynch Global Allocation Fund, Inc., Merrill Lynch Global Bond Fund for Investment and Retirement, Merrill Lynch Global Convertible Fund, Inc., Merrill Lynch Global Resources Trust, Merrill Lynch Global Utility Fund, Inc., Merrill Lynch Growth Fund for Investment and Retirement, Merrill Lynch Healthcare Fund, Inc., Merrill Lynch International Equity Fund, Merrill Lynch International Holdings, Inc., Merrill Lynch Latin America Fund, Inc., Merrill Lynch Multi-State Limited Maturity Municipal Series Trust, Merrill Lynch Multi-State Municipal Series Trust, Merrill Lynch Municipal Bond Fund, Inc., Merrill Lynch Series Trust, Merrill Lynch Pacific Fund, Inc., Merrill Lynch Phoenix Fund, Inc., Merrill Lynch Retirement Benefit Investment Program, Inc., Merrill Lynch Short-Term Global Income Fund, Inc., Merrill Lynch Special Value Fund, Inc., Merrill Lynch Strategic Dividend Fund, Merrill Lynch Technology Fund, Inc., Merrill Lynch Utility Income Fund, Inc., Merrill Lynch World Income Fund, Inc., and each future open-end management investment company that is advised by Merrill Lynch Investment Management, Inc. (doing business as Merrill Lynch Asset Management and previously known as Merrill Lynch Asset Management, Inc.) ("MLAM") or an entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with MLAM, and distributed by Merrill Lynch Funds Distributors, Inc. ("MLFD") or an entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with MLFD (all of the above being referred to collectively as the "Funds"), MLAM, Merrill Lynch Asset Management U.K. Limited ("MLAM U.K."), Merrill Lynch (Suisse) Investment Management S.A. ("MLAM (Suisse)"), Fund Asset Management, Inc., ("FAMI") and each future investment adviser that is an entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) of MLAM (together, the "Advisers"), and MLFD and each future distributor that is an entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) of MLFD (each a "Distributor").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act to amend prior orders that granted exemptive relief from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order under section 6(c) of the Act amending certain prior orders so that the Funds may issue an unlimited number of classes of shares, impose a contingent deferred sales charges ("CDSC") on certain redemptions of shares, and waive the CDSC in certain instances.

FILING DATE: The application was filed on December 1, 1992, and amend on

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[4] ICC Rule 222(b).

[5] 15 U.S.C. § 78q-1(b)(3)(F).

[6] 15 U.S.C. § 78s(b)(3)(A)(i).

[7] 17 CFR 240.19b-4(e)(1) (1993).

[8] 17 CFR 200.30-3(a)(12) (1993).

March 17, 1993, May 20, 1993, August 13, 1993, and March 4, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 11, 1994 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Box 9011, Princeton, New Jersey 08543.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272–2511, or C. David Messman, Branch Chief, (202) 272–3018 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the existing Funds is organized as an open-end management investment company registered under the Act and has entered into an investment advisory agreement with one of the Advisers. Each existing Fund has entered into a distribution agreement with MLFD under which MLFD is principal underwriter for the Fund. Each future Fund will be organized as an open-end management investment company registered under the Act, will enter into an investment advisory agreement with one of the Advisers, and will enter into a distribution agreement with a Distributor. MLAM, a wholly-owned subsidiary of Merrill Lynch & Co., Inc., and FAMI, a wholly-owned subsidiary of MLAM, are both registered investment advisers under the Investment Advisers Act of 1940 (the "Advisers Act"). MLAM (Suisse) and MLAM U.K. also are registered investment advisers under the Advisers Act.[1] MLAM (Suisse) is subsidiary of Merrill Lynch Bank (Suisse), S.A. which is, in turn, an indirect subsidiary of Merrill Lynch & Co., Inc., MLAM's parent. MLAM U.K. also is an indirect subsidiary of Merrill Lynch & Co., Inc. MLFD, a wholly-owned subsidiary of MLAM, is a registered broker-dealer under the Securities Exchange Act of 1934.

2. Applicants received an order pursuant to section 6(c) of the Act granting an exemption from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d) and rule 22c–1 thereunder permitting the Funds to implement a new method of offering their shares to the public (the "Original Order").[2] In 1991, certain of the parties to the Original Order received an order under section 6(c) to permit the payment to the Distributor of an account maintenance fee at a maximum annual rate of 0.25% of the average daily net asset value of the Class A shares pursuant to a plan adopted in accordance with rule 12b–1 (a "12b–1 Plan").[3] In 1992, the Original Order was amended to delete a condition requiring the Directors/Trustees of the Funds to purchase an equal number of Class A shares and Class B shares.[4] The three previous orders are referred to collectively herein as the "Existing Orders," and the relief granted by the Existing Orders is referred to as the "Dual Distribution System."

3. Under the Dual Distribution System, the Funds currently may offer two classes of shares: (a) Class A shares that are subject to a conventional front-end sales load and a rule 12b–1 fee, and (b) Class B shares that are subject to a contingent deferred sales charge ("CDSC") and a rule 12b–1 fee. The Funds also may waive the CDSC with respect to certain redemptions of Class B shares.

4. The Existing Orders were granted pursuant to a number of representations and are subject to a number of conditions. Applicants believe that certain of these representations and conditions unnecessarily restrict the operation of the Dual Distribution System. The Existing Orders also prevent the Funds from issuing other classes of shares. Applicants seek an exemptive order to permit them the flexibility to create new classes of shares and implement new types of sales charge and shareholder servicing arrangements.

5. Applicants propose to establish a multiple distribution and shareholder servicing arrangement (the "Multi-Class System"). Under the Multi-Class System, each Fund would have the flexibility to from time to time create one or more additional classes of shares the terms of which may differ as described in the conditions below. In addition, applicants may offer an automatic conversion feature as described below.

6. Applicants also may enter into shareholder servicing plans with various organizations. Shareholder servicing plans are used to compensate certain organizations for providing support services to their customers. Such services typically would include aggregating and processing purchase and redemptions requests from a service organization's customers, placing net purchase and redemption orders with the Funds' Distributor, processing dividend payments on behalf of customers, periodically providing information to customers showing their share positions, and other similar services. Although none of the Funds currently has a shareholder servicing plan, applicants are seeking the broadest relief presently permitted so they will have the flexibility to respond to different market opportunities.

7. Applicants also seek relief to offer an automatic conversion feature. Applicants propose that one or more classes of shares in a Fund (the "Higher Fee Class") (*e.g.*, a class of shares paying a rule 12b–1 fee or a non-rule 12b–1 shareholder servicing fee which is greater than that applicable to another class of shares in the same Fund) may automatically convert to shares of another class (the "Lower Fee Class") without the imposition of any additional sales charges after a certain period of time. Thereafter, Higher Fee Class shares will be subject to the lower continuing fees, if any, applicable to Lower Fee Class shares.

8. Each time any shares convert into shares of another class, a pro rata portion of the shares purchased through the reinvestment of dividends and other distributions paid in respect of Higher Fee Class shares in the shareholder's account also would convert into shares of the other class. The portion would be determined by the ratio that the shareholder's shares converting into shares of the other class (excluding shares acquired through dividends and distributions) bears to the shareholder's total shares possessing this conversion feature and not acquired through dividends and distributions.

9. In one circumstance, it may be impossible for applicants to determine

[1] MLAM U.K. and MLAM (Suisse) were not parties to the prior orders.

[2] Investment Company Act Release Nos. 16503 (July 28, 1988) (notice), and 16535 (Aug. 23, 1988) (order).

[3] Investment Company Act Release Nos. 18015 (Feb. 22, 1991) (notice), and 18059 (Mar. 22, 1991) (order).

[4] Investment Company Act Release Nos. 18684 (Apr. 28, 1992) (notice), and 18732 (May 27, 1992) (order).

the period of time individual beneficial owners of Higher Continuing Fee Class shares have held such shares because of intermediary retirement plan record holders. Accordingly, applicants request the ability to treat Higher Continuing Fee Class shares that are Class B shares purchased by certain retirement plans (the "Retirement Plans") as described below.

10. Funds cannot keep track of the holding periods of Class B shares held by third parties in accounts on behalf of their individual plan participants. While a Fund's transfer agent keeps records indicating each purchase and sale transaction effected by the plan sponsor, such data does not correlate with purchase and sale transactions effected for the benefit of the individual plan participants. Therefore, a Fund is unable to determine the period of time an underlying beneficial shareholder has held Class B shares for purposes of determining when an automatic conversion would occur. Furthermore, the third party plan sponsors might not have such historical records readily accessible to be able to determine holding periods.

11. The result is that even if a Fund followed its transfer agent's records in deciding when to convert Class B shares held of record by Retirement Plans, some plan sponsors would be unable to allocate fairly such Lower Continuing Fee Class Shares among the underlying accounts because there is no necessary correlation between the purchase and sale of Class B shares at the plan level and the placing of transaction orders by the plan sponsor with the Fund.

12. Applicants will treat Class B shares owned by Retirement Plans separately for purposes of the conversion feature. A Retirement Plan may own Class B shares in several Funds. Applicants propose that in the month in which the first share purchased by a particular Retirement Plan has been held for the period required for conversion, all Class B shares of all Funds held in that Retirement Plan simultaneously will be exchanged for Lower Continuing Fee Class Shares of the appropriate Funds. The conversion period for Retirement Plans will be set at a uniform period disclosed in each Fund's Prospectus or Statement of Additional Information and will be no longer than the maximum period applicable to Class B shares in the Funds held by shareholders who are not Retirement Plans.

13. Applicants' modified method of conversion for Retirement Plans will apply only to shares that are outstanding before the conversion of all Class B shares of all Funds held by a Retirement Plan. After such conversion, applicants will not sell shares having a conversion feature to Retirement Plans unless the Fund or the Retirement Plan has adequate record keeping systems in place to account for the length of time participants in a Retirement Plan have held their shares. Thus, if Class B shares are sold to a Retirement Plan after the initial conversion, they will convert into Lower Continuing Fee Class Shares in the same manner as shares held by all other Class B shareholders.

14. For administrative efficiency and to reduce a Fund's recordkeeping expenses, if after Higher Continuing Fee Class shares would convert into Lower Continuing Fee Class shares a shareholder would still own a *de minimis* number of Higher Continuing Fee Class shares of a Fund, those remaining shares will simultaneously be exchanged for Lower Continuing Fee Class shares when the other shares are so converted. A *de minimis* level (expressed either as a dollar amount or a number of shares) will be established for each Fund, will be uniformly applied to all shareholders and will be disclosed in the Fund's prospectus. All accounts falling below the *de minimis* level will be converted.

15. The Funds will obtain opinions of counsel or rulings of the Internal Revenue Service that the conversion of shares does not constitute a taxable event under current federal income tax law. The conversion of shares may be suspended if an opinion of counsel or ruling with respect to the taxability of conversion is no longer available at the time of such conversion. If conversion is suspended, higher Fee Class shares might continue to be subject to the higher rule 12b–1 or non-rule 12b–1 shareholder servicing fees for an indefinite period.

16. Before the creation of any new class of shares and once the characteristics of such proposed class have been decided, the Expert (as defined in condition 6), or a suitable substitute Expert, will review the methodologies and control procedures used with respect to the net asset values and dividends and distribution determinations for such new class of shares.

17. The Funds' CDSC arrangements (including any waivers) will be identical to those described in the Existing Orders except that instead of being limited to only Class B shares in a Fund, such CDSC arrangements may apply to more than one class of shares in the same Fund.[5]

18. Applicants will comply with Article III, Section 26 of the Rules of the Fair Practice of the National Association of Securities Dealers, Inc. in determining the maximum limitation on sales charges that may be imposed.

Applicants' Legal Analysis

Applicants believe that the granting of the relief requested will let applicants respond to competition from others and changing customer demands while relieving the SEC and its staff of the burden of repeatedly reviewing requests for greater flexibility in administering the Funds' distribution and shareholder servicing arrangements. Applicants believe that the relief requested is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

Applicants request an order of the SEC pursuant to section 6(c) amending the Existing Orders so that the conditions thereto read in their entirety as follows:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund and be identical in all respects, except as set forth below. Any differences among the terms of the various classes of shares of the same Fund will relate solely to: (a) The impact of different 12b–1 Plan payments and non-rule 12b–1 shareholder servicing plan payments made by a particular class of shares (and any other costs relating to the implementation of a 12b–1 Plan or non-rule 12b–1 shareholder servicing plans) which will be borne solely by shareholders of such class, shareholder servicing costs attributable solely to a particular class, and any incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the SEC pursuant to an amendment order, (b) voting rights on matters that pertain to 12b–1 Plans, or if presented to shareholders, voting rights on matters that pertain to non-rule 12b–1 shareholder servicing plans, (c) redemption fees, (d) exchange privileges, (e) the designation of each class of shares of a Fund, and (f) an automatic conversion feature pursuant

[5] Applicants received a no-action letter from the SEC allowing waiver of the CDSC in connection with redemptions by qualified retirement plans regardless of whether such redemptions occur before or after an employee's retirement. Merrill Lynch Retirement Benefit Government Securities Fund, Inc. (Aug. 30, 1990).

to which shares of one class automatically would convert into shares of another class after a period of time.

2. The Directors/Trustees of each of the Funds, including a majority of the independent Directors/Trustees, shall have approved the Multi-Class System, including the conversion feature, prior to the implementation of the Multi-Class System by a particular Fund. The minutes of the meetings of the Directors/Trustees of each of the Funds regarding the deliberations of the Directors/Trustees with respect to the approvals necessary to implement the Multi-Class System, including the conversion feature, will reflect in detail the reasons for determining that the proposed Multi-Class System is in the best interests of both the Funds and their respective shareholders.

3. On an ongoing basis, the Directors/Trustees of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the various classes of shares. The Directors/Trustees, including a majority of the independent Directors/Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Advisers and the Distributor will be responsible for reporting any potential or existing conflicts to the Directors/Trustees. If a conflict arises, the Advisers and the Distributor at their own costs will remedy such conflict up to and including establishing a new registered management investment company.

4. The Directors/Trustees of the Funds will receive quarterly and annual statements concerning distribution and non-rule 12b–1 shareholder servicing plan expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only distribution or servicing expenditures properly attributable to the sale or servicing of one class of shares will be used to support the rule 12b–1 fee or servicing fee charged to shareholders of such class of shares. Expenditures not related to the sales or servicing of a specific class of shares will not be presented to the Directors/Trustees to support rule 12b–1 fees or service fees charged to shareholders of such class of shares. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent Directors/Trustees in the exercise of their fiduciary duties.

5. Dividends paid by a Fund with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that costs and distributions fees associated with any 12b–1 Plan or shareholder servicing plan relating to a particular class will be borne exclusively by such class and except that any incremental expenses subsequently identified that should be properly allocated to such class which shall be approved by the SEC pursuant to an amended order will be borne exclusively by such class.

6. The methodology and procedures for calculating the net asset value and dividends/distributions of certain classes and the proper allocation of income and expenses between those classes has been reviewed by an expert (the "Expert"). The Expert has rendered a report to applicants (which has been provided to the staff of the SEC) stating that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Funds which the Funds agree to make, will be available for inspection by the SEC staff upon the written request for such work papers by a senior member of the Division of Investment Management or of a Regional Office of the SEC, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" as defined and described in SAS No. 44 of the American Institute of Certified Public Accountants ("AICPA"), and the ongoing reports will be "Reports on Policies and Procedures Placed in Operation and Tests of Operating Effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

7. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends/distributions among the various classes of shares and the proper allocation of income and expenses among such classes of shares and this representation has been concurred with by the Expert in the initial report referred to in Condition 6 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in Condition 6 above. Applicants agree to take immediate corrective action if the Expert, or appropriate substitute Expert, does not so concur in the ongoing reports.

8. The prospectuses of the Funds will contain a statement to the effect that a financial consultant and any other person entitled to receive compensation for selling or servicing Fund shares may receive different compensation with respect to one particular sales arrangement for a class of shares over another arrangement for a class of shares in the Fund.

9. Merrill Lynch, Pierce, Fenner & Smith Incorporated will adopt compliance standards as to when shares of a particular class may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to these standards.

10. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Directors/Trustees of the Funds with respect to the Multi-Class System will be set forth in guidelines which will be furnished to the Directors/Trustees as part of the materials setting forth the duties and responsibilities of the Directors/Trustees.

11. Each Fund will disclose the respective expenses, performance data, distribution arrangements, service fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The shareholder reports of such Fund will disclose the respective expenses and performance data applicable to each class of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally. Each Fund's per share data, however, will be prepared on a per class basis with respect to the classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will disclose the respective expenses

and/or performance data applicable to all classes of shares. If applicants provide information for publication in any newspaper or similar listing of the Funds' net asset values and public offering prices, information for classes of shares will be provided separately.

12. Applicants acknowledge that the grant of the exemptive order requested by this application will not imply SEC approval, authorization or acquiescence in any particular level of payments that the Funds may make pursuant to 12b–1 Plans or shareholder servicing plans in reliance on the exemptive order.

13. Any automatic conversion of shares of one class into shares of another class will occur on the basis of the relative net asset values of the shares of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee in the aggregate to which they were subject prior to the conversion.

14. If a Fund implements any amendment to its 12b–1 Plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by a class of shares subject to the plan ("Subject Shares"), existing shares of another class that would otherwise convert into Subject Shares ("Converting Shares") will stop converting into Subject Shares unless the holders of the Converting Shares, voting separately as a class, approve the proposal. The Directors/Trustees of the Funds shall take such action as is necessary to ensure that existing Converting Shares are exchanged or converted into a new class of shares ("New Subject Shares"), identical in all material respects to Subject Shares as they existed prior to implementation of the proposal, no later than such shares previously were scheduled to convert into Subject Shares if such holders of Converting Shares do not approve such proposal and such proposal is approved by the holders of the Subject Shares and such material increase occurs. If deemed advisable by the Directors/Trustees of the Funds to implement the foregoing, such action may include the exchange of all existing Converting Shares for a new class ("New Converting Shares"), identical to existing Converting Shares in all material respects except that New Converting Shares will convert into New Subject Shares. New Subject Shares or New Converting Shares may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the Directors/Trustees of the Funds reasonably believe will not be subject to federal taxation. In accordance with condition 3, any additional cost associated with the creation, exchange, or conversion of New Subject Shares or New Converting Shares shall be borne solely by the Advisers and the Distributor. Converting Shares sold after the implementation of the proposal may convert into Subject Shares subject to the higher maximum payment, provided that the material features of the Subject Shares plan and the relationship of such plan to the Converting Shares are disclosed in an effective registration statement.

15. In the case of Funds adopting shareholder servicing plans, such plans will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders will not enjoy the voting rights specified in rule 12b–1.

16. Applicants will comply with the provisions of proposed rule 6c–10 under the Act (Investment Company Act Release No. 16619 (Nov. 2, 1988)), as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–7078 Filed 3–24–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26008]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

March 18, 1994.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 11, 1994, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, it ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

University Cogeneration, Inc., (31–904)

University Cogeneration, Inc. ("University") 4464 Alvarado Canyon Road, San Diego, California 92120, has filed an application for an order declaring it not to be an electric utility company under section 2(a)(3) of the Act.

University is a California corporation and is primarily engaged in the business of designing, developing, owning, operating and maintaining, either directly or indirectly, industrial energy projects that are qualifying facilities ("QFs") as defined by the Public Utility Policies Act of 1978. University wholly owns the Chula Vista Cogeneration Project ("Project") located at Rohr Industries in Chula Vista, California. In addition to owning the Project, University serves as general partner in two California limited partnerships, each of which owns a QF in California.

The Project is a 9 megawatt, combined-cycle, gas-fired facility and is currently operated as a QF. Rohr Industries ("Rohr") serves as the steam host for the Project and purchases approximately 90% of the electric output from the Project. The remainder of the output is sold to the San Diego Gas & Electric Company. It is stated that gross annual sales from the Project were $4,031,852 in 1991, were $3,571,584 in 1992, and will be approximately $2,891,000 in 1993.

University states that Rohr, the steam host for the Project, has recently decreased its steam requirements, thereby placing the Project's QF status at risk.

University is wholly owned by JWP West, a subsidiary of JWP, Inc. JWP, Inc. owns a single QF on Long Island. University states that neither JWP, Inc., nor University, nor any of their affiliates currently owns or operates any public-utility as defined by the Act.

Monongahela Power Company, et al. (70–6179)

Monongahela Power Company ("Monongahela"), 1310 Fairmont Avenue, Fairmont, West Virginia 26554, The Potomac Edison Company ("Potomac Edison"), 10345 Downsville Pike, Hagerstown, Maryland, and West Penn Power Company ("West Penn"), 800 Cabin Hill Drive, Greenburg, Pennsylvania 15601 (collectively, "Companies"), all wholly owned public-utility subsidiary companies of Allegheny Power System Inc., a registered holding company, have filed a post-effective amendment to their declaration under Sections 6(a), 7, 9(a), 10 and 12(c) of the Act and Rule 50(a)(5) thereunder.

The County Commission of Pleasants County, West Virginia ("County Commission"), is planning to issue three new series of pollution control revenue bonds in the aggregate principal amount of not more than $77.5 million and maturing no later than 2020 ("Series C Bonds"). The proceeds from the Series C Bonds will be used to refund the County Commission's Series B Pollution Control Revenue Bonds currently outstanding as follows: (i) $11.5 million principal amount of Pollution Control Revenue Bond 6.95% (West Penn Power Company Pleasants Power Station Project), 1978 Series B, maturing August 1, 2003; (ii) $20 million principal amount of Pollution Control Revenue Bonds 7.00% (West Penn Power Company Pleasants Power Station Project), 1978 Series B, maturing August 1, 2008; (iii) $21 million principal amount of Pollution Control Revenue Bonds 7.30% (The Potomac Edison Company Pleasants Power Station Project), 1978 Series B, maturing August 1, 2008; and (iv) $25 million principal amount of Pollution Control Revenue Bonds 7.75% (Monongahela Power Company Pleasants Power Station Project), 1979 Series B, maturing August 1, 2009 (collectively, "Series B Bonds"). The Series B Bonds were used to provide additional money for the installation of pollution control equipment and facilities ("Facilities") at Pleasants Power Station in Pleasants County, West Virginia.

The Series C Bonds will be issued under a supplemental trust indenture with a corporate trustee, approved by the Companies, and will be sold at such time, at such interest rate and for such price as shall be approved by the Companies. However, the interest rate for each series of Series C Bonds will not exceed the interest rate of the corresponding series of Series B Bonds presently outstanding. Additionally, the Companies state that they will not enter into the proposed refunding transaction unless the estimated present value savings derived from the net difference between interest payments on the new issues of comparable securities and on the securities to be refunded is, on an after tax basis, greater than the present value of all redemption and issuing costs, assuming an appropriate discount rate. The discount rate used shall be the estimated after tax interest rate on the Series C Bonds to be issued.

Concurrently with the issuance of the Series C Bonds, the Companies propose to issue, through December 31, 1995, non-negotiable promissory notes ("Pollution Control Notes") corresponding to the Series C Bonds in respect of the principal amount, interest rates and redemption provisions (which may include a special right of the holder to require the redemption or repurchase of the holder of the Series C Bond at stated intervals) and having installments of principal corresponding to any mandatory sinking fund payments and stated maturities. The Pollution Control Notes will be substituted for and replace the promissory notes presently outstanding. The outstanding notes will be cancelled.

The Pollution Control Notes will be secured by a second lien on the Facilities and certain other properties, pursuant to the Deed of Trust and Security Agreement dated November 1, 1977, as supplemented by a First Supplement thereto dated August 1, 1978 as to West Penn and Potomac Edison and a First Supplemental thereto dated February 1, 1979 as to Monongahela ("Deed"). The security interest in the Facilities and certain other property conveyed by the Deed is subject to the lien securing each Company's first mortgage bonds.

Payments on the Pollution Control Notes will be made to the Trustee under supplements to the existing indentures and shall be applied by the Trustee to pay the maturing principal and redemption price of and interest and other costs on the Series C Bonds as the same become due. Each Company also proposes to pay any trustees' fees and expenses incurred by the County Commission. The Companies request an exception from the competitive bidding requirements of rule 50 under subsection (a)(5) thereof in connection with the issuance of the Pollution Control Notes.

The Series C Bonds may be in either coupon or registered form and will bear interest semi-annually at rates to be determined. The Series C Bonds will be issued pursuant to supplemental indentures which provide for redemption, no-call and other appropriate provisions to be determined. The supplemental indentures will also provide that substantially all the proceeds of the sale of the Series C Bonds by the County Commission must be applied to the cost of the Facilities, including the cost refunding the Series B Bonds. The Series C Bonds will be secured by the Pollution Control Notes and will be supported by various covenants of each Company contained in the original Pollution Control Financing Agreement dated as of November 1, 1977.

Northeast Utilities, et al. (70–8062)

Northeast Utilities ("Northeast"), 174 Brush Hill Ave., West Springfield, Massachusetts 01089, a registered holding company, and its wholly owned subsidiaries, Charter Oak Energy, Inc. ("Charter Oak") and COE Development Corporation ("COE Development") (collectively, "Applicants"), each located at 107 Selden Street, Berlin, Connecticut, 06037–1616, have filed a further post-effective amendment under sections 6(a), 7, 9(a), 10, 12(b), 13(b), 32, and 33 of the Act and rules 45, 53, 87, 90, and 91 thereunder to their application-declaration filed under sections 6(a), 7, 9(a), 10, 12(b), and 13(b) of the Act and rules 45, 87, 90, and 91 thereunder.

By order dated January 24, 1994 (HCAR. 25977) ("January 1994 Order") Charter Oak and COE Development were authorized to engage in preliminary development activities and make investments in and finance the acquisition of exempt wholesale generators ("EWGs") and foreign utility companies ("FUCOs") in the amount of $100 million through December 30, 1994. The January 1994 Order also authorized the Applicants to issue guarantees and assume the liabilities of subsidiary companies for preliminary development activities.

The Applicants now propose to issue guarantees and assume the liabilities of subsidiary companies for development activities, including construction and permanent financing, and contingent liabilities subsequent to operation with regard to those EWG and FUCO projects that do not require advance approval from the Commission for the Applicants to acquire an interest.

The Applicants have found that on occasion such guarantees and assumptions of liability may provide them with opportunities to participate in private power opportunities on a favorable basis without expending funds. The full contingent amount of any guarantees or assumptions of liabilities would be counted as part of

the authorized development activities limit of $100 million authorized in the January 1994 Order.

The Applicants also propose to use Charter Oak or other system company employees within a de minimis limit to render services to affiliated EWGs and FUCOs. The Applicants represent that they would not use more than 0.5% of total holding company system employees and no more than 1% of the system service company employees at any one time for rendering services to affiliated EWGs and FUCOs.

Consolidated Natural Gas Company (70–8107)

Consolidated Natural Gas Company ("CNG"), CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222, a registered holding company, has filed a declaration under sections 6 and 7 of the Act and Rule 50(a)(5) thereunder.

CNG proposes on or before June 30, 1995 to issue and sell the remaining unissued balance of up to $400 million principal amount of debt securities ("Securities") authorized by the Commission on April 21, 1993 (HCAR No. 25800) under a new indenture ("Indenture"). The Securities will be sold in one or more series at a price, exclusive of accrued interest, which will be not less than 98% nor more than 101% of the principal amount and at an interest rate which will be a multiple of ⅛, 1/10, or 1/20 of 1%. The Securities will mature in not more than thirty years from the date of issue. CNG proposes to issue and sell the Securities either by competitive bidding, including the alternative bidding procedures authorized by the Commission's Statement of Policy Concerning Application of Rule 50 under the Public Utility Holding Company Act of 1935 (HCAR No. 22623, Sept. 2, 1982) or by an exception to competitive bidding under Rule 50(a)(5). In the event Rule 50 is rescinded, CNG requests authority to be permitted to issue and sell the Securities under competitive bidding including the alternative procedures without prior Commission approval.

The Indenture differs from CNG's current indenture ("1971 Indenture") in eight substantial ways: (1) Setting of terms; (2) form of security; (3) lien restrictions; (4) sale and leaseback restrictions; (5) additional debt incurrence limitations; (6) issue and sale of subsidiaries' stock; (7) limitation of dividends; and (8) defeasance.

The proceeds from the sale of the Securities will be added to CNG's treasury fund and subsequently used to: (1) Finance, in part, capital expenditures of CNG and CNG's subsidiaries, (2) finance the purchase of CNG's common stock in the open market, and/or (3) acquire, retire, or redeem securities of which CNG is an issuer without the need for prior Commission approval pursuant to Rule 42 under the Act.

New England Electric System, et al. (70–8303)

New England Electric System ("NEES"), a registered holding company, and its nonutility subsidiary company, New England Electric Resources, Inc. ("NEERI"), both located at 25 Research Drive, Westborough, Massachusetts 01582, have filed an application-declaration under sections 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

NEES states that, in early 1993, it was approached by Quality Power Systems, Inc. ("QPS") to contribute funds for the development of certain patented technology for a low harmonic distortion uninterruptible power system (UPS). QPS intends to develop, manufacture and market UPS and is committed to locating its manufacturing facility for UPS in either Massachusetts or New Hampshire within the retail electric service territory of NEES's retail electric company subsidiaries.

In mid 1993, NEES made a research and development grant of $250,000 to QPS to assist in the development of UPS. In return for this grant and to encourage the continued support, QPS and New England Power Service Company ("NEPSCO"), a service company subsidiary of NEES, entered into an agreement, under which QPS gave NEPSCO the right to receive at no cost $250,000 of QPS's convertible debentures ("Debentures"). NEPSCO has assigned this right to NEERI effective January 1, 1994. The applicants state that, upon Commission authorization to receive the debentures, all rights to receive a product grant of two UPS per year for the first four years of commercial production would terminate.

The Debentures would pay quarterly interest after June 1, 1994, at the Bank of Boston base rate plus 2% and would have a maturity of ten years from date of issuance. The Debentures would not have sinking fund provisions nor prepayment provisions nor general voting rights. NEERI would be allowed to have one member on the Board of Directors of QPS. The Board would have six or seven members.

NEERI requests authority to exercise its right to the Debentures on or before July 1, 1994, and if it so elects, to convert the Debentures on or before December 31, 1995 to 9.9% of the common stock of QPS (990 shares of a total of 10,000 shares, no par value). In addition, NEERI requests the authority to invest up to an additional $100,000 in QPS on or before December 31, 1995, in the form of subordinated loans having an interest rate no lower than the Bank of Boston base rate plus 2% and a maturity not in excess of five years.

NEERI will not be directly involved in the manufacture, marketing or selling of the UPS. However, it may offer marketing advise and consulting services to QPS and permit its name to be used as part of marketing efforts.

The $250,000 grant made to QPS is currently carried on NEES's books as an investment. NEES proposes to transfer this amount to NEERI's books and NEERI would treat it as an investment in QPS. NEES further proposes that such capital contribution be authorized in addition to the $1 million previously authorized by Commission order dated September 4, 1992 (HCAR No. 25621). If NEERI invests up to an additional $100,000 in QPS, NEERI may use funds from NEES provided under its existing $1 million authority.

Metropolitan Edison Company (70–8319)

Metropolitan Edison Company ("Met-Ed"), 2800 Pottsville Pike, Reading, Pennsylvania 19440, an electric public-utility subsidiary company of General Public Utilities Corporation, a registered holding company, has filed a declaration under sections 9(a), 10 and 12(c) of the Act and Rule 42 thereunder.

Met-Ed intends to issue and sell up to $100 million aggregate stated value of one or more new series of its cumulative preferred stock, each issue having a stated value not to exceed $100 per share ("Preferred") under Rule 52 of the Act. Met-Ed requests authorization to acquire or redeem through the operation of such sinking fund or optional redemption provision up to the entire amount of the Preferred to be issued and sold.

Met-Ed would acquire shares of the Preferred through sinking fund and redemption provisions. Specifically, shares of the Preferred would be redeemable, under certain conditions, at Met-Ed's option in connection with any merger or consolidation to which Met-Ed may be a party. Any such redemption would be at a price equal to the stated value of those shares of the Preferred being redeemed, together with accrued dividends to the date of redemption, plus a premium of up to 100% of the dividend rate.

The preferred would not otherwise be redeemable at the option of Met-Ed for a period ending on a date occurring up

to 15 years following the date of its issuance.

Alternatively, Met-Ed may preclude redemption at its option for a period of up to 15 years if the monies for such redemption are obtained at an effective interest rate or dividend cost less than the dividend rate of the Preferred shares being redeemed. After the expiration of such non-redemption or non-refunding period, as the case may be, such shares would be redeemable at Met-Ed's option. The price paid to redeem such shares would equal the stated value thereof together with accrued dividends to the date of redemption, plus a premium of up to 100% of the dividend rate. This price would decline annually on a straight-line basis until arriving at the stated value thereof, and thereafter be set at the stated value of the shares being redeemed.

In addition, certain shares of the Preferred may be subject to a sinking fund. Such a sinking fund would require that, following the expiration of a non-redemption or non-refunding period, Met-Ed annually redeem a number of shares of Preferred equal to between 5% and 20% of the number of shares of Preferred initially issued. The price paid to redeem such shares of the Preferred would equal the stated value thereof, together with accrued dividends to the date of redemption. Met-Ed may also, at its option, redeem on any such date an additional equivalent amount of Preferred (sometimes referred to as a "double up" option). Met-Ed may reduce or satisfy any such sinking fund redemption requirement, in whole or in part, by the number of shares of Preferred theretofore purchased or otherwise acquired by Met-Ed (other than pursuant to such redemption provisions) and not previously made the basis for such reduction or satisfaction.

Pennsylvania Electric Company (70–8321)

Pennsylvania electric Company ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania 15907, an electric public-utility subsidiary company of General Public Utilities Corporation, a registered holding company, has filed a declaration under sections 9(a), 10 and 12(c) of the Act and Rule 42 thereunder.

Penelec intends to issue and sell up to $100 million aggregate stated value of one or more new series of its cumulative preferred stock, each issue having a stated value not to exceed $100 per share ("Preferred") under Rule 52 of the Act. Penelec requests authorization to acquire or redeem through the operation of such sinking fund or optional redemption provision up to the entire amount of the Preferred to be issued and sold.

Penelec would acquire shares of the Preferred through sinking fund and redemption provisions. Specifically, shares of the Preferred would be redeemable, under certain conditions, at Penelec's option in connection with any merger or consolidation to which Penelec may be a party. Any such redemption would be at a price equal to the stated value of those shares of the Preferred being redeemed, together with accrued dividends to the date of redemption, plus a premium of up to 100% of the dividend rate.

The Preferred would not otherwise be redeemable at the option of Penelec for a period ending on a date occurring up to 15 years following the date of its issuance.

Alternatively, Penelec may preclude redemption at its option for a period of up to 15 years if the monies for such redemption are obtained at an effective interest rate or dividend cost less than the dividend rate of the Preferred shares being redeemed. After the expiration of such non-redemption or non-refunding period, as the case may be, such shares would be redeemable at Penelec's option. the price paid to redeem such shares would equal the stated value thereof together with accrued dividends to the date of redemption, plus a premium of up to 100% of the dividend rate. This price would decline annually on a straight-line basis until arriving at the stated value thereof, and thereafter be set at the stated value of the shares being redeemed.

In addition, certain shares of the Preferred may be subject to a sinking fund. Such a sinking fund would require that, following the expiration of a non-redemption or non-refunding period, Penelec annually redeem a number of shares of Preferred equal to between 5% and 20% of the number of shares of Preferred initially issued. The price paid to redeem such shares of the Preferred would equal the stated value thereof, together with accrued dividends to the date of redemption. Penelec may also, at its option, redeem on any such date an additional equivalent amount of Preferred (sometimes referred to as a "double up" option). Penelec may reduce or satisfy any such sinking fund redemption requirement, in whole or in part, by the number of shares of Preferred thereto fore purchased or otherwise acquired by Penelec (other than pursuant to such redemption provisions) and not previously made the basis for such reduction or satisfaction.

Ohio Valley Electric Corporation (70–8335)

Ohio Valley Electric Corporation ("OVEC"), P.O. Box 468, Piketon, Ohio 45661, an electric public-utility subsidiary company of American Electric Power Company, Inc. and Allegheny Power System, Inc., both registered holding companies, has filed an application under sections 9 and 10 of the Act.

OVEC requests authority to purchase or lease 515 railcars for approximately $22.7 million. OVEC proposes to use the railcars to deliver coal to its associate company, Indiana-Kentucky Electric Corporation's Clifty Creek Plant.

To minimize the costs associated with the railcars, OVEC also proposes to sublease the railcars to its associate companies and, during times of non-utilization by OVEC and its associate companies, to non-affiliates. OVEC states that it would sublease the railcars only if the revenue generated by the sublease covered all variable costs and makes a contribution to the fixed costs of the railcars.

Central Power and Light Company, et al. (70–8345)

Central Power and Light Company, 539 North Carancahua Street, Corpus Christi, Texas 78401, Public Service Company of Oklahoma, 212 East 6th Street, Tulsa, Oklahoma 74119, Southwestern Electric Power Company, 428 Travis Street, Shreveport, Louisiana 71156, and West Texas Utilities Company, 301 Cypress, Abilene, Texas 79601 (collectively, "Applicants"), all electric public-utility subsidiary companies of Central and South West Corporation, a registered holding company, have filed an application under sections 9(a)(1) and 10 of the Act.

Applicants propose to lease owned unit trains and railcars to nonaffiliates through July 1, 1999. Lease terms will cover those periods during which the Applicants do not need the unit trains and railcars for operations, and could range for as short a time as it takes to make one trip to ten months. Any leases will provide for lease rates at or near market rates at the time such leases are entered into.

Applicants anticipate that leases of the owned unit trains and railcars to nonaffiliates will be a small percentage not expected to exceed an average of 50% of available unit trains and railcars for each Applicant. Rental income received from the leasing of unit trains and railcars will be recorded as credit to fuel stock account number 151 and will go to offset the depreciation of railcars and unit trains which is charged to this

account. Any leasing income in excess of the amount of depreciation charged to account number 151 will be credited to rental income account number 454.

Consolidated Natural Gas Company (70-8365)

Consolidated Natural Gas Company ("CNG"), CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222-3199, a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act and Rule 50 and 50(a)(5) thereunder.

CNG proposes to issue and sell on or before June 30, 1996 up to $400 million principal amount of debentures ("Debentures"). The Debentures will be sold in one or more series at a price, exclusive of accrued interest, which will be not less than 98% nor more than 101% of the principal amount and at an interest rate which will be a multiple of ⅛, 1/10, or 1/20 of 1%. The Debentures will mature in not more than thirty years and will be issued in accordance with the indenture between CNG and Chemical Bank, as Trustee, dated May 1, 1971. CNG proposes to issue and sell the Debentures either by competitive bidding, including the alternative bidding procedures authorized by the Commission's Statement of Policy Concerning Application of Rule 50 under the Public Utility Holding Company Act of 1935 (HCAR No. 22623, September 2, 1982), or by an exception to the competitive bidding requirements under Rule 50(a)(5) through negotiated public or private offerings. In the event Rule 50 is rescinded as proposed by the Commission in HCAR No. 25668 (November 4, 1992), CNG requests authority to be permitted to issue and sell Debentures under competitive bidding including the aforesaid alternative procedures without prior Commission approval.

The proceeds from the sale of the Debentures will be added to CNG's treasury fund and subsequently used for general corporate purpose to: (1) Finance, in part, capital expenditures of CNG and CNG's subsidiaries, (2) displace roll-over of commercial paper previously issued for working capital purposes, (3) finance the purchase of CNG's common stock in the open market, and/or (4) acquire, retire, or redeem securities of which CNG is an issuer without the need for prior Commission approval pursuant to Rule 42 under the Act.

Energy Initiatives, Inc., et al. (70-8369)

Energy Initiatives, Inc. ("EII"), One Upper Pond Road, Parsippany, New Jersey 07054, a non-utility subsidiary of General Portfolios corporation ("GPC"), and GPC, Mellon Bank Center, Tenth and market Streets, Wilmington, Delaware 19801, a non-utility subsidiary of General Public Utilities Corporation ("GPU"), and GPU, 100 Interpace Parkway, Parsippany, New Jersey 07054, a registered holding company, have filed an application-declaration under Sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and Rules 45, 50, 51, 90 and 91 thereunder.

By orders dated June 26, 1990 and December 18, 1992 (HCAR Nos. 25108 and 25715, respectively), EII was authorized to engage in preliminary project development and administrative activities in connection with its investment in qualifying cogeneration facilities ("QF") and small power production facilities, each as defined in the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA"), and in exempt wholesale generators ("EWG"), as defined in the Act.

EII now proposes to acquire all of the issued and outstanding common stock ("Stock") of a non-affiliated, privately-held California corporation the name of which is confidential at this time but which shall be referred to as "Cogen Corp." herein. Cogen Corp. is engaged exclusively in the business of owning or leasing and operating QFs and developing other QFs and EWGs. Cogen Corp. is the wholly-owned subsidiary of a California corporation ("Parent No. 1"), which, in turn, is a wholly-owned subsidiary of a publicly-held Canadian corporation ("Parent No. 2") engaged in oil and gas exploration, development, production and sales (collectively, "Sellers"). Upon the acquisition by EII of the Cogen Corp. Stock, Cogen Corp. will become a wholly-owned subsidiary of EII.

In order to purchase the Stock, EII proposes to enter into a stock purchase agreement ("Stock Purchase Agreement") which the Sellers under which: (i) EII would agree to purchase the Stock for a total cash consideration of $80 million, subject to adjustment under certain circumstances described below ("Purchase Price"), and (ii) GPU or EII would enter into one or more assumption agreements ("Assumption Agreements") under which they would agree to assume certain contingent obligations undertaken by Parent No. 2 with respect to three of Cogen Corp.'s projects, as described below, and indemnify Parent No. 2 against any liabilities arising thereunder.

Upon execution of the Stock Purchase Agreement, GPU would deposit into escrow cash in an amount equal to the maximum estimated Purchase Price (including any possible "Deferred Consideration" as described below) ("Escrow Cash") and Parent No. 1 would deposit the Stock into escrow under an escrow agreement ("Escrow Agreement") between the parties and an independent bank or trust company acting as escrow agent ("Escrow Agent").

Distribution of the Escrow Cash to Sellers and the Stock to EII by the Escrow Agent ("Closing") would be expressly conditioned upon: (i) Receipt of a Commission order authorizing the transaction; (ii) satisfaction of the requirements of the Hart-Scott-Rodino Act; (iii) receipt of the required number of necessary third-party consents to the transaction; and (iv) certain other specified conditions.

If the Closing conditions are not satisfied by May 15, 1994, the Purchase Price is subject to increase by $15,000 per day ("Deferred Consideration") for each day the Closing or the termination of the Escrow Agreement is thereafter delayed; provided, however, that either EII or Sellers may terminate the Escrow Agreement if all such conditions are not satisfied by August 15, 1994, in which case, the Escrow Agent will refund the Escrow Cash to GPU and return the Stock to Parent No. 2, subject, however, to payment to Sellers of any required Deferred Consideration and a "stipulated damage payment," as described below, under certain circumstances. In addition, if the third party consents with respect to at least three QF projects (including one of either project number 1 ("Project No. 1") or project number 2 ("Project No. 2"), which are generally described below) are not received by May 15, 1994, the Sellers may, at their option, terminate the Escrow Agreement, and the Escrow Agent would refund the Escrow Cash to GPU and return the Stock to Parent No. 2 without further liability to either party.

The Stock Purchase Agreement and escrow Agreement will also provide that in the event that required third party consents with respect to at least three QF projects (including at least one of Project No. 1 or Project No. 2) are obtained, the Closing would occur, provided the other Closing conditions are satisfied. In such event, the Purchase Price would be reduced, based upon an agreed upon valuation of the QF projects which would be retained by Sellers ("Unsold Projects") and either retained in the existing entities or transferred to a separate entity ("Unsold Project Corps.") EII would retain until December 31, 1994 the exclusive right to continue to seek such remaining third party consents and purchase the related Unsold Projects or the Unsold Project Corps. stock at the initially agreed upon

price. After that date, the Escrow Agreement would be terminated with respect to the Unsold Projects, the balance of the Escrow Cash (representing the unpaid Purchase Price relating to the Unsold Projects) would be refunded to GPU and the stock of the Unsold Project Corps. returned to Sellers. EII would then have a non-exclusive right until December 31, 1995 to purchase the Unsold Project Corps. stock or, alternatively, its interests in any of the Unsold Projects at the initially agreed upon price.

In addition, as noted below, in order to comply with the Federal Energy Regulatory Commission's ("FERC's") 50% limitation on electric utility ownership under PURPA, it will be necessary for EII to provide for the sale, at the Closing, or at least a 50% ownership interest in Project No. 1 since 100% of that project is currently indirectly owned by Cogen Corp. In the event such sale cannot be so accomplished, EII's purchase of Project No. 1 at the Closing would be effectively limited to 50% thereof and the balance of the Project No. 1 ownership would be retained by Sellers and together with a portion ($7 million) of the $10 million Purchase Price related thereto would continue to be held by the Escrow Agent under the Escrow Agreement or pursuant to another arrangement agreed by the parties. EII would retain an irrevocable option or similar right to effect the sale of such remaining 50% interest within 12 months of the signing of the Stock Purchase Agreement. If EII is unable to do so, the Project No. 1 interest would be returned to Sellers and the related escrowed Purchase Price amount refunded to GPU.

Accrued interest on the Escrow Cash would be payable to GPU except to the extent the Closing is delayed due solely to the failure to satisfy a specified closing condition, in which case such accrued interest for the period of the delay attributable to the condition failure and until the Closing would be payable to Sellers.

Following the execution of the Stock Purchase and escrow Agreements and pending the Closing, EII and Sellers would jointly manage Cogen Corp's. business and operations subject to certain restrictions and limitations set forth in the Stock Purchase Agreement. EII and Sellers would share equally in Cogen Corp's. expenses incurred from March 1, 1994 until the earlier of the Closing or the date the Escrow Agreement is otherwise terminated.

GPU and EII have agreed to pay Sellers a "stipulated damage amount" of up to $7 million in the event the Closing does not occur by August 15, 1994 due to the failure of a specified condition set forth in the Stock Purchase Agreement, or $5 million if EII otherwise fails or refuses to purchase the Cogen Corp. Stock, except for certain specified reasons.

Additional authorization is being herein requested for EII to issue, sell and renew from time to time through December 31, 2004 its promissory notes ("EII Notes") to one or more commercial banks representing borrowings in the aggregate principal amount of up to $25 million outstanding at any one time. The proceeds of such borrowings would be used to pay a portion of the Purchase Price, and the balance of the Purchase Price would be supplied through cash capital contributions from GPU or GPC. The EII Notes, which would be issued pursuant to loan agreements with the bank lenders who financed Sellers' QF projects, would mature no later than December 31, 2004 and bear interest at varying rates as provided in the loan agreements, but in any event not in excess of: (a) 250 basis points above the lending bank's prime or base rate as in effect from time to time, (b) 400 basis points above the specified London Interbank Offered Rate, as in effect from time to time, or (c) a negotiated fixed rate which, in any event, would not exceed 12%. The EII Notes would be prepayable to the extent provided therein.

It is proposed that payment of principal and interest on the EII Notes, together with EII's other obligations under the loan agreements, be unconditionally guaranteed by GPU or secured by a pledge by GPC of the EII common stock to the bank lenders. Alternatively, GPU may enter into a support agreement with the lending banks with respect to repayment of the EII Notes.

Project No. 1 is a 102 MW (net) natural gas fired qualifying cogeneration facility located in Florida. Project No. 1 is owned by a Florida limited partnership in which Cogen Corp. presently holds, indirectly through wholly-owned subsidiaries, 100% of the general and limited partnership interests. In order to comply with the ownership limitations for qualifying cogeneration facilities pursuant to the FERC's regulations under PURPA, simultaneous with its purchase of the Stock, EII will either: (a) Sell at the Closing not less than a 50% interest in Project No. 1 to an unaffiliated third-party which is not an electric utility affiliate, or (b) otherwise effectively limit at the Closing its acquisition in Project No. 1 to 50% thereof, pending such sale. (As noted above, in the latter event, EII would have 12 months from the signing of the Stock Purchase Agreement to sell such 50% interest; absent such sale, the remaining 50% Project No. 1 interest would be retained by Sellers and the related portion of the escrowed Purchase Price refunded to GPU.)

Project No. 1 sells its entire net capacity and energy to a Florida utility under a long-term power purchase contract and provides steam under a long-term steam sales contract to an agricultural cooperative for food processing, packaging and cold storage.

On August 30, 1993, after completion of construction, Project No. 1 was sold to an owner-trustee and leased back to the Project No. 1 partnership. In the event the Project No. 1 partnership elects not to extend the lease for the 5 year option period, rent which would otherwise have been paid during the option period, equal to approximately $7 million, will become immediately due and payable. The obligation to pay such rent in the event the lease term is not extended has been guaranteed ("Rent Guarantee") by Parent No. 2

In addition to the Rent Guarantee, in connection with the sale and lease back financing Parent No. 2 has also guaranteed until July 1, 1995 payment of any cost incurred by it that becomes necessary to correct a defect in Project No. 1's steam turbine foundation, up to $2 million ("Foundation Guarantee"), and the payment under certain circumstances of certain state taxes which might be deemed payable in the future in connection with Project No. 1's construction financing ("Tax Guarantee"). In connection with EII's acquisition of the Stock, GPU and EII will enter into an Assumption Agreement under which they would assume Parent No. 2's obligations under the Rent Guarantee, the Foundation Guarantee, and the Tax Guarantee (as well as the Repurchase Guarantee and the Catalyst Guarantee described below) and would agree to indemnify Parent No. 2 against any liabilities arising thereunder.

Except with respect to obligations which may arise under the Rent Guarantee, the Foundation Guarantee and the Tax Guarantee, Project No. 1 partnership obligations under the lease and all other Project No. 1 partnership obligations are non-recourse to Cogen Corp.

Project No. 2 is a 102 MW (net) natural gas fired qualifying cogeneration facility located in Florida. Project No. 2 is owned by a Florida limited partnership in which Cogen Corp. holds, indirectly through wholly-owned subsidiaries, 50% of the general and limited partnership interests and of

which Cogen Corp. is the managing general partner. The other 50% of the general and limited partnership interests are held, indirectly through wholly-owned subsidiaries, by an unaffiliated privately-held diversified industrial corporation ("Investor 2") which, among other businesses, is engaged in natural gas supply and transportation. Investor 2, through subsidiary companies, provides a portion of project No. 2's gas transportation services and peaking gas requirements and is project No. 2's steam host.

Project No. 2 sells its entire net capacity and energy to a Florida electric utility under a long-term power purchase contract and provides steam to a subsidiary of Investor 2 for citrus processing under a long-term steam sales agreement.

Project number 3 ("Project No. 3") is an 80 MW (net) natural gas fired QF located in New York. Project No. 3 is owned by a Delaware limited partnership in which Cogen Corp. holds, indirectly through wholly-owned subsidiaries, approximately 33% of the general and limited partnership interests and of which Cogen Corp. is the managing general partner. The balance of the partnership interests is held by an institutional insurance company, the operations and maintenance contractor and an unaffiliated energy project developer.

Project No. 3 sells its entire net capacity and energy to a New York utility under a long-term power purchase agreement and sells steam to an adjacent educational institution primarily for space heating under a long-term steam sales contract.

Project number 4 ("Project No. 4") is a 29.4 MW (net) QF located in Michigan. Project No. 4 is owned by a Michigan limited partnership in which Cogen Corp. holds indirectly through a wholly-owned subsidiary, a 1% general partnership interest and of which Cogen Corp. is the managing general partner. The balance of the partnership interests is held indirectly by the local gas distribution company ('Investor 4") which, through a separate subsidiary, is Project No. 4's gas supplier. Cogen Corp. also leases the project site from Project No. 4's steam host and, through a subsidiary, subleases the site to the partnership, for which it receives sublease payments from the Partnership under a sublease. Project No. 4 sells its entire net capacity and energy to a Michigan utility and sells steam for process use to an industrial corporation under a long-term steam sales contract.

Project Nos. 1, 2, 3 and 4 are operated and maintained under a contract with an unaffiliated operations and maintenance contractors.

Project number 5 ("Project No. 5") is a 26 MW (net) qualifying cogeneration facility located in California. Project No. 5 is owned by a California limited partnership in which Cogen Corp. holds, indirectly through wholly-owned subsidiaries, a 30% interest in the partnership as a general partner. The balance of the partnership interests is held by an unaffiliated energy project developer and the financing subsidiary of a large industrial corporation.

Project No. 5 provides all of the electric energy required by its steam host, up to 4 MW, and sells the balance of its net capacity and energy to a California utility under a long-term power purchase agreement. The steam host is an industrial corporation which purchases steam under a long-term steam sales contract for use in certain manufacturing processes.

Project No. 5 is operated and maintained under a long-term contract with one of the partnership's general partners which is not affiliated with Cogen Corp.

Applicants state that Cogen Corp. also has other projects under active development ("Development Projects"), principally: (i) A 28.5 MW gas-fired QF located in New York for which a power purchase contract with a New York electric and gas utility has been executed and a steam sales agreement is being negotiated; and (ii) a number of other natural gas-fired QFs or EWGs, totalling approximately 275 MW, with respect to which proposals to supply electric power have been submitted in response to utility requests for proposals. The Applicants further state that EII will fund any preliminary project development costs with respect to the Development Projects either through internally generated funds or pursuant to further Commission authorization.

Applicants also request an exception from the requirements of Section 13 of the Act so that EII, either directly or indirectly through Cogen Corp. and/or its affiliated subsidiaries and partnerships, may provide project management, administrative and similar services as managing general partner of the projects from time to time and to sublease the Project No. 4 site to the Project No. 4 partnership in the manner and under such terms and conditions, including with respect to the fees payable by each project partnership for such services, as may be provided in the related project partnership agreements and Project No. 4 sublease.

Moreover, the Applicants state that the amount of such management fees and sublease payments payable to EII by each project partnership will in no way effect the rates to be paid for each project's energy and capacity by the purchasing electric utility and thus by the utility's ratepayers, since those rates have been established based upon the purchasing utility's "avoided costs" of obtaining energy and capacity which costs are unrelated to each project partnership's operating expenses. Accordingly, GPU and EII believe that it is not necessary or appropriate for the protection of investors or consumers that such management services or sublease arrangements be performed at cost.

It is stated that each QF project (namely, Project No. 1, Project No. 2, Project No. 3, Project No. 4 and Project No. 5) is now and will, following the consummation of the proposed transactions, remain a "qualifying facility" under PURPA and the FERC's regulations thereunder.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-7081 Filed 3-24-94; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-20148; No. 812-8812]

United of Omaha Life Insurance Company, et al.

March 18, 1994.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC")

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: United of Omaha Life Insurance Company ("United of Omaha"), United of Omaha Separate Account B ("Account B"), and Mutual of Omaha Investor Services, Inc. ("MOIS") (collectively, "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the Investment Company Act of 1940 ("1940 Act") granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction from the assets of Account B of mortality and expense risk charges in connection with the offer and sale of certain group flexible payment variable deferred annuity contracts ("Contracts").

FILING DATE: The application was filed on February 4, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 12, 1994, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o United of Omaha Life Insurance company, Mutual of Omaha Plaza, Omaha, Nebraska 68175.

FOR FURTHER INFORMATION CONTACT: Yvonne Hunold, Senior Counsel (202) 272–2676, or Michael Wible, Special Counsel (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. United of Omaha (formerly, United Benefit Life Insurance Company), is a stock life insurance company and a wholly-owned subsidiary of Mutual of Omaha Insurance Company.

2. Account B was established as a separate investment account by United of Omaha. A registration statement on Form N–4 to register Account B as a unit investment trust under the 1940 Act, and to register the contracts under the Securities Act of 1933 ("1933 Act") has been filed with the Commission.

Account B will have a number of subaccounts, each of which will invest solely in a specific corresponding portfolio of the American Odyssey Funds, Inc., or of such other registered investment companies as United of Omaha may make available under the Contracts from time-to-time (each, a "Fund") or any combination thereof. Each Fund will be a diversified, open-end management investment company, and may have a number of classes or series, in accordance with Rule 18f-2 of the 1940 Act.

3. The Contacts are group flexible payment variable deferred annuity policies and individual certificates of participation ("Certificates") thereunder. A Group Master Policy is issued to and owned by an employer or retirement plan administrator or trustee. A Certificate under the Group Master Policy is issued for each individual participant under the Contract ("Participant").

4. MOIS, an affiliate of United of Omaha, will serve as the distributor and principal underwriter of the Contracts. MOIS is registered under the Securities Exchange Act of 1934 as a broker-dealer and is a member of the National Association of Securities Dealers, Inc.

5. Net Purchase Payments can be allocated: (a) the Fixed Account and receive a fixed rate of interest as specified from time-to-time by United of Omaha, and (b) one or more subaccounts of Account B ("Subaccounts") and be credited with the investment experience of the selected Subaccount(s). Prior to annuitization, all or a portion of a Certificate's Cash Surrender Value may be transferred between Subaccounts. The Contracts will provide for a series of Annuity Payments and Payout Options. The Contracts also will provide for the payment of a death benefit, which is equal to the greatest of: (a) Account Value (without deduction of the withdrawal charge), less any charge for applicable premium taxes and any outstanding loans and loan interest; (b) Net Purchase Payments, less any partial withdrawals and any outstanding loans and loan interest; or (c) the Account Value as of the most recent 9-year Participant Anniversary prior to age 66, less any amounts subsequently withdrawn, any charge for applicable premium taxes, and any outstanding loans and loan interest.

6. Various fees and expenses are deducted under the Contracts. A $30 annual Policy Fee will be deducted in arrears from the Account Value on the last Valuation Date of the Policy Year and upon a complete surrender. If applicable, a pro-rate portion of the charge is also deducted on the first Policy Anniversary after a Participant's Effective Date. A daily Administrative Expense Charge equal to an effective annual rate of .15% of the net assets of the subaccount is deducted from the assets of each subaccount. There currently is no charge for transfers, but United of Omaha reserves the right to impose a $10 fee for the thirteenth and each subsequent request to transfer Account Value from a Subaccount made during a single Participant Year. A withdrawal Processing fee equal to the lesser of $15 or 2% of the amount withdrawn will be imposed for the second and each subsequent partial withdrawal request during a single Participant Year.

United of Omaha does not anticipate any profit from these administrative charges, none of which will be increased. United of Omaha will deduct the above charges in reliance upon and in compliance with Rule 26a-1 under the 1940 Act.

7. A one-time set-up fee of $30 and a quarterly asset charge equal to an annual rate of 1.50% will be deducted from Account Value with respect to Certificates for which an optional asset allocation program has been elected.

8. United of Omaha will deduct a charge of up to 3.5% for the aggregate premium taxes paid on behalf of a particular Contract or from the Account Value upon a complete surrender, death of the Participant, or at annuitization, depending upon when it is required to be paid. No charges currently are made for federal, state or local taxes, other than premium taxes. United of Omaha may, however, deduct charges for such taxes, or the economic burden thereof, from Account B in the future.

9. No sales charges are deducted from premium payments under the Contracts. A contingent deferred sales charge ("CDSC") in the amount of up to 6% is imposed on certain full or partial surrenders during the first nine years after a Certificate's Effective Date to cover expenses relating to the sales of the Contracts. No CDSC is assessed upon: (a) Participant's death, (b)a corrective distribution, (c) a hardship distribution, if the Participant suffers a permanent disability or is diagnosed as having a terminal illness, (d) the Participant's separation from service of his or her employer, or (e) the application of a Contract's proceeds to any Payout Option, with certain exceptions, for a period of at least 36 months. United of Omaha will not increase the CDSC.

United of Omaha does not anticipate that the CDSC will generate sufficient revenues to pay the cost of distributing the Contracts. If this charge is insufficient to cover the expenses, the deficiency will be met from the general account assets of United of Omaha, which may include amounts derived from the charge for mortality and expenses risks.

10. A daily charge equal to an effective annual rate of 1.25% of the value of the net assets in Account B will be imposed to compensate United of Omaha for bearing certain mortality and expense risks in connection with the Contracts. The 1.25% charge will not increase. Of this amount, approximately three-fourths is attributable to mortality risks, and approximately one-fourth is

attributable to expense risks. The charge may be a source of profit for United of Omaha which will be added to its surplus and may be used for, among other things, the payment of distribution, sales and other expenses. United of Omaha currently anticipates a profit from this charge.

11. The mortality risk arises from United of Omaha's contractual obligation to make Annuity Payments (determined in accordance with the annuity tables and other provisions contained in the Contracts) regardless of how long all Annuitants or any individual Annuitant may live. This undertaking assures that neither an Annuitant's own longevity, nor an improvement in general life expectancy, will adversely affect the periodic Annuity Payments that the Annuitant will receive under a Contract. A mortality risk also is assumed in connection with the Death Benefit guarantee because it could exceed the Account Value. There is no extra charge for the enhanced Death Benefit.

12. The expense risk assumed by United of Omaha is that its actual administrative costs will exceed the amount recovered through the administrative charges.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

3. Applicants request exemptions from Sections 26(a)(2) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction from the assets of Account B of the 1.25% charge for the assumption of mortality and expense risks. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicants submit that United of Omaha is entitled to reasonable compensation for its assumption of mortality and expense risks. Applicants represent that the 1.25% mortality and expense risk charge under the Contracts is consistent with the protection of investors because it is a reasonable and proper insurance charge. The mortality and expense risk charge is a reasonable charge to compensate United of Omaha for the risks that: Annuitants under the Contract will live longer as a group than has been anticipated in setting the annuity rates guaranteed in the Contracts; the Account Value will be less than the Death Benefit; and administrative expenses will be greater than amounts derived from the administrative charges.

4. Applicants represent that the 1.25% mortality and expense risk charge is within the range of industry practice for comparable annuity contracts. This representation is based upon an analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, death benefit guarantees, and guaranteed annuity rates. United of Omaha will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative review.

5. Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be available to pay distribution expenses not reimbursed by the CDSC. United of Omaha has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit Account B, Contractowners and Participants. The basis for that conclusion is set forth in a memorandum which will be maintained by United of Omaha at its administrative offices and will be available to the Commission.

6. Account B will only invest in management investment companies which undertake, in the event they should adopt a plan under rule 12b-1 to finance distribution expenses, to have a board of directors or trustees, a majority of whom are not "interested persons," formulate and approve any such plan.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-7079 Filed 3-24-94; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before April 25, 1994. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3RD Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205-6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Semi-Annual Report on Representatives and Compensation Paid for Services in Connection with Obtaining Federal Contracts.

Form No.: SBA Form 1790.

Frequency: Semi-Annual.

Description of Respondents: 8(a) Program participants.

Annual Responses: 4,500.

Annual Burden: 9,000.

Dated: March 21, 1994.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 94–7118 Filed 3–24–94; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Economic Injury Disaster Loan Area #8204]

Florida; Declaration of Disaster Loan Area

Pinellas County and the contiguous counties of Hillsborough and Pasco constitute an economic injury disaster area as a result of an oil spill and resulting fire which occurred on August 10, 1993. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on December 19, 1994 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308 or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The economic injury number assigned to this disaster for the State of Florida is 820400.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: March 18, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–7119 Filed 3–24–94; 8:45 am]

BILLING CODE 8025–01–M

[License No. 05/05–5104]

Application for Transfer of Ownership; Tower Ventures, Inc.

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.601 of Regulations governing small business investment companies (13 CFR 107.601 (1993)) for a transfer of ownership of Tower Ventures, Inc., 3333 Beverly Road, Hoffman Estates, Illinois 60179 under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 et seq.) and the Rules and Regulations promulgated thereunder.

The present shareholder plans to sell 100 percent of its shares of ownership in the Licensee to MESBIC Ventures Holding Company. The present and proposed change in ownership is as follows:

Name	Present percent of ownership	Proposed percent of ownership
Sears, Roebuck and Company	100	0
MESBIC Ventures Holding Co.	0	100

The proposed shareholders of more than 10% of the shares of MESBIC Ventures Holding Company are as follows: NationsBank of Texas, NA (28% of total common shares to be outstanding), Sears, Roebuck and Company (17%), and Sun Company, Inc. (14%).

Matters involved in SBA's consideration of the application include the business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this notice, submit written comments on the proposed transfer of ownership to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, S.W., Washington, D.C. 20416.

A copy of the Notice will be published in a newspaper of general circulation in Dallas, Texas.

(Catalog of Federal Domestic Assistance Program No. 59–011, Small Business Investment Companies)

Dated: March 15, 1994

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–7120 Filed 3–24–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended March 18, 1994

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49461.

Date filed: March 14, 1994.

Parties: Members of the International Air Transport Association.

Subject: TC2 MV/C 0117 dated February 11, 1994, Mail Vote 671—Germany-Western Africa cargo rates.

Proposed Effective Date: April 1, 1994.

Docket Number: 49466.

Date filed: March 16, 1994.

Parties: Members of the International Air Transport Association.

Subject: TC12 MV/P 0352 dated February 22, 1994 Mail Vote 673 (Intermediate Class Fares).

Proposed Effective Date: April 15, 1994.

Docket Number: 49469.

Date filed: March 17, 1994.

Parties: Members of the International Air Transport Association.

Subject: TC2 Telex Mail Vote 679, African Fares, r–1—003y r–2—076j.

Proposed Effective Date: April 1, 1994.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–7068 Filed 3–24–94; 8:45 am]

BILLING CODE 4910–62–P

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended March 18, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49458.

Date filed: March 14, 1994.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 11, 1994.

Description: Application of American Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, applies for renewal of Segments 1 and 2 of its Certificate for Route 602, issued in the American-TWA Route Transfer by Order 91–4–47, April 25, 1991, authorizing scheduled foreign air transportation of persons, property, and mail from points in the United States to London and other points in Europe, the Middle East, Africa, and Asia.

Docket Number: 49472.

Date filed: March 18, 1994.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 15, 1994.

Description: Application of Frontier Airlines, Inc., pursuant to section 401(d)(1) of the Act and subpart Q of the Regulations, for issuance of a certificate of public convenience and necessity so as to authorize Frontier to provide scheduled interstate and overseas air transportation of persons, property and mail between various points in the United States.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–7067 Filed 3–24–94; 8:45 am]

BILLING CODE 4910–62–P

National Highway Traffic Safety Administration

[Docket No. 93–45; Notice 2]

Denial of Petition for Import Eligibility Determination

This notice sets forth the reasons for the denial of a petition submitted to the National Highway Traffic Safety Administration ("NHTSA") under section 108(c)(3)(C)(i)(II) of the National Traffic and Motor Vehicle Safety Act ("the Act"), 15 U.S.C. 1397(c)(3)(C)(i)(II), and 49 CFR part 593. The petition, which was submitted by ICI International, Inc. of Orlando, Florida "ICI"), a Registered Importer of motor vehicles, requested NHTSA to determine that a 1971 Daimler Limousine DR 420 passenger car that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because it has safety features that comply with, or are capable of being modified to comply with, those standards.

NHTSA published a notice in the **Federal Register** on June 30, 1993 (58 FR 30570) that contained a thorough description of the petition, and solicited public comments upon it. One comment was received in response to this notice, from Jaguar Cars Inc. ("Jaguar"), the United States importer of new motor cars manufactured by Jaguar Cars Ltd., the manufacturer of the 1971 Daimler Limousine. Jaguar noted that Jaguar Cars Led. never produced a "DR 420" model Daimler Limousine, but that it did produce a model "DS 420." ICI subsequently acknowledged that "DS 420" is the appropriate model designation for the vehicle that is the subject of its petition.

In its comments, Jaguar expressed disagreement with ICI's claim that the 1971 Daimler Limousine DS 420, as originally manufactured, complies with Standard. Nos. 103 Defrosting and Defogging Systems, 104 Windshield Wiping and Washing Systems, 203 Impact Protection for the Driver From the Steering Control System and 205 Glazing Materials. Jaguar further asserted that the 1971 Daimler Limousine DS 420 cannot "be easily modified" to comply with Standard Nos. 108 Lamps, Reflective Devices and Associated Equipment, 208 Occupant Crash Protection, 209 Seat Belt Assemblies, and 210 Seat Belt Assembly Anchorages.

ICI was given an opportunity to respond to Jaguar's comments. In its response, ICI failed to supply sufficient information to establish that the 1971 Daimler Limousine DS 420 complies with Standard Nos. 103, 104, and 203, and can be easily modified to comply with Standard No. 210. NHTSA requested ICI to supply this information on six separate occasions from November 17, 1993 to January 24, 1994, but received no response to any of these requests. This has compelled NHTSA to conclude, from the state of the record, that it cannot determine that the 1971 Daimler Limousine DS 420 is eligible for importation. The petition must therefore be denied under 49 CFR 593.7(e).

In accordance with section 108(c)(3)(C)(ii) of the Act, 15 U.S.C. 1397(c)(3)(C)(ii), and 49 CFR 593.7(e), NHTSA will not consider a new import eligibility petition covering this vehicle until at least three months from the date of this notice.

Authority: 15 U.S.C. 1397(c)(3)(C)(ii); 49 CFR 593.7; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 21, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–7008 Filed 3–24–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–06; Notice 2]

Determination That Nonconforming 1991 Mercedes-Benz 500SEL Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1991 Mercedes-Benz 500SEL passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1991 Mercedes-Benz 500SEL passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the 1991 Mercedes-Benz 420SEL), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective March 25, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards must be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California (Registered Importer R–90–007) petitioned NHTSA to determine whether 1991 Mercedes-Benz 500SEL passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on January 27, 1994 (59 FR 3919) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP #63 is the vehicle eligibility number assigned to vehicles admissible under this notice of final determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1991 Mercedes-Benz 500SEL (Model ID 126.037) is substantially similar to a 1991 Mercedes-Benz 420SEL originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act. and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 21, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–7002 Filed 3–24–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 93–90; Notice 2]

Determination That Nonconforming 1993 BMW 730i Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1993 BMW 730i passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1993 BMW 730i passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the 1993 BMW 740i), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective March 25, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer R–90–009) petitioned NHTSA to determine whether 1993 BMW 730i passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on December 30, 1993 (58 FR 6944) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 57 is the vehicle eligibility number assigned to vehicles admissible under this notice of final determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1993 BMW 730i is substantially similar to a 1993 BMW 740i originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and that the 1993 BMW 730i is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (c)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on March 21, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–7003 Filed 3–24–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 93–88; Notice 2]

Determination That Nonconforming 1991 Mercedes-Benz 500E Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1991 Mercedes-Benz 500E passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1991 Mercedes-Benz 500E passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the 1991 Mercedes-Benz 300E), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective March 25, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards must be refused admission into the United States on and after January 31, 1990, unless NHTSA

has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California (Registered Importer R–90–007) petitioned NHTSA to determine whether 1991 Mercedes-Benz 500E passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on December 22, 1993 (58 FR 67903) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 56 is the vehicle eligibility number assigned to vehicles admissible under this notice of final determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1991 Mercedes-Benz 500E (Model ID 124.036) is substantially similar to a 1991 Mercedes-Benz 300E originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 21, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–7004 Filed 3–24–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 93–92; Notice 2]

Determination That Nonconforming 1977 BMW R100S Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1977 BMW R100S motorcycles are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1977 BMW R100S motorcycles not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1977 BMW R100S motorcycle), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective March 25, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicles to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California (Registered Importer R–90–007) petitioned NHTSA to determine whether 1977 BMW R100S motorcycles are eligible for importation into the United States. NHTSA published notice of the petition on December 30, 1993 (58 FR 69446) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 58 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1977 BMW R100S motorcycle not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1977 BMW R100S motorcycle originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 21, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–7007 Filed 3–24–94; 8:45 am]

BILLING CODE 4910–59–M

Coast Guard

[CGD 94-017]

National Preparedness for Response Exercise Program (PREP)

AGENCY: Coast Guard, DOT.

ACTION: Notice of Exercise Schedule and Workshop.

SUMMARY: The Coast Guard, the Environmental Protection Agency (EPA), the Research and Special Programs Administration (RSPA), and the Minerals Management Service (MMS), in concert with the states, the oil industry and concerned citizens, jointly developed the National Preparedness for Response Exercise Program (PREP) to provide guidelines for compliance with Oil Pollution Act of 1990 pollution response exercise requirements. The PREP guidelines outline the applicability, type, frequency, and objectives of the required exercises and will aid the government and industry in meeting the Federal requirements for pollution response exercises. This notice proposes an exercise schedule for 1995, 1996, and 1997; solicits comments on the proposed schedule and the PREP scheduling process outlined here; solicits industry members to lead Area exercises for 1995; and announces a workshop to be held on May 19, 1994, to discuss the proposed schedule and the scheduling process.

DATES: Written comments relating to the schedule or the scheduling process should be submitted by May 1, 1994, to the address listed below. Industry members interested in leading the industry-led Area exercises or participating in the government-led Area exercises should submit their names to the National Scheduling Coordinating Committee (NSCC) by May 1, 1994, to the address listed below, and indicate the date and location of the proposed exercise. The workshop will be held on May 19, 1994, in Alexandria, Virginia.

ADDRESSES: Written comments should be mailed to the NSCC at Commandant (G-MEP-4), room 2100, U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593-0001, ATTN: LCDR Rhae Giacoma.

FOR FURTHER INFORMATION CONTACT: LCDR Rhae Giacoma, Office of Marine Safety, Security and Environmental Protection (G-MEP-4), (202) 267-2616.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard, EPA, RSPA, and MMS encourage interested persons to comment on the PREP Area exercise schedule and the scheduling process. The schedule and scheduling process may be revised in view of the comments. Comments will be discussed at the scheduling workshop to be held on May 19, 1994. After the workshop, the final schedule for Area exercises for 1995 and the tentative schedule for 1996 and 1997 Area exercises will be published by a notice in the Federal Register.

Background Information

The Coast Guard, EPA, RSPA, and MMS developed the National Preparedness for Response Exercise Program (PREP) to provide guidelines for compliance with the Oil Pollution Act of 1990 pollution response exercise requirements (33 U.S.C. 1321(j)). One section of the PREP focuses on Area exercises, which are designed to evaluate the entire response mechanism in a given Area to ensure adequate pollution response preparedness. Each Area is defined by geographical boundaries, for which, a separate and distinct Area Contingency Plan has been developed. The goal of the PREP is to conduct 20 Area exercises per year, with the intent of exercising most Areas of the country within a three year period.

The three year period under consideration here for Area exercise scheduling includes calendar years 1995, 1996 and 1997. The schedule consists of 20 Area exercises per year (6 government-led and 14 industry-led). Industry members required to submit response plans are actively solicited to lead the industry-led Area exercises or participate in the government-led Area exercises. Requests to lead or participate in an Area exercise should be made to the NSCC, as described in DATES.

Scheduling Process

The Area exercise scheduling process is as follows:

1. The NSCC, comprised of representatives of the Coast Guard, EPA, RSPA, and MMS, will meet in January of each year to develop a proposed Area exercise schedule for the upcoming three year period. (For example, when the NSCC meets in 1995, the three years considered will be 1996, 1997 and 1998.) The information included in the proposed schedule will be the exercise Area, the exercise quarter, whether the exercise is industry-led or government-led, and the types of industry that will lead the exercise (vessel, marine transportation-related (mtr) facility, non marine transportation-related facility, offshore facility or pipeline). Once developed, the proposed schedule will be published in the Federal Register in February of each year.

2. The NSCC will solicit input on this proposed schedule for each three year period. The NSCC is specifically looking for input from On-Scene Coordinators (OSCs), Coast Guard Districts and EPA Regional Offices, the Regional Response Teams, the states and the industry plan holders regarding the Area scheduled to be exercised, the time frame for each exercise, the mix of the industry types selected for participation, and any federal, state or local government or industry operational issues affecting the schedule. The NSCC is also looking for industry plan holders to lead the Area exercises or participate in the government-led Area exercises.

3. When reviewing the proposed schedule, issues to be considered at the local Area level include:

a. Can the Area sponsor an exercise in the quarter listed? Do Area activities already scheduled preclude an exercise from being held in this time frame? What specific dates would be appropriate for the exercise?

b. Is the industry type to be exercised in accordance with the proposed schedule appropriate for the Area? For instance, if needed for the exercise planned, is there a pipeline or offshore platform operating in the Area? Has one specific type of industry dominated Area exercises in the past? For example, have many or most of the Area exercises in the past focused on vessels?

c. Should the Area receive credit for response to a major pollution incident? Was the response to this incident evaluated in accordance with the PREP guidelines? (Only responses to major pollution incidents that have been evaluated using the criteria for an Area exercise, as outlined in the PREP guidelines, will be considered for credit as an Area exercise.)

4. Issues to be considered at the district and regional level include:

a. Does the mix of industry types proposed for involvement in the exercises fairly represent the district or region? Are all industry types adequately covered?

b. Are state issues being taken into consideration? Close coordination with the states is critical when reviewing the exercise schedule and the types of industries being exercised.

c. Regional Response Teams (RRTs) should be consulted to ensure that RRT issues such as the coordination of other exercises (for example, FEMA hazmat exercises) are taken into consideration when scheduling the Area exercises and exercise participants.

d. Regional coordinating committees (such as the Area Industry Exercise

Coordinating Committee in the Pacific Northwest) should be consulted for input.

5. The suggested process for commenting on the schedule is as follows:

a. Coast Guard OSCs are requested to comment, on behalf of their Area Committees, to the NSCC through their respective district offices.

b. EPA OSCs are requested to comment, on behalf of their Area Committees, to the NSCC through their respective regional offices.

c. Industry plan holders are requested to comment directly to the NSCC as described in "ADDRESSES." (If a regional coordinating committee is established in the region, industries are encouraged to use this committee to coordinate industry responses for forwarding to the NSCC.)

d. Coast Guard Districts and EPA Regions are requested to comment directly to the NSCC, on behalf of their OSCs, RRTs, and other regional organizations, as described in "ADDRESSES."

e. The states are requested to comment on the scheduling process directly to the NSCC as described in "ADDRESSES."

Selection of Industry Participants for Area Exercises

The selection process for industry participants for the Area exercises will be as follows:

1. Industry response plan holders interested in leading the Area exercises or supporting the government-led Area exercises should submit their requests directly to the NSCC as described in "DATES." These requests should be submitted by May 1. The NSCC will notify the districts/regions and OSCs of the industry plan holder requests received; the districts/regions and OSCs shall notify the NSCC of requests submitted locally for exercise participation. The NSCC will coordinate with the districts/regions and OSCs prior to the scheduling workshop to finalize the list of potential exercise plan holders slated for exercise participation, for presentation at the workshop.

2. In Areas where no plan holders have come forth and expressed an interest in leading or participating in the Area exercises, OSCs will recommend industry plan holders for exercise participation to the NSCC. Some issues that will be considered when selecting industry participants include the number of times a specific industry has conducted exercises in the past, the operating history of industries in the Area and the perceived need for a particular industry plan holder to be exercised. The OSCs will consult with the selected industry plan holders prior to submitting their names for exercise participation.

3. In Areas scheduled for exercises involving pipelines or offshore facilities, the OSCs will coordinate with the respective regulatory agency (RSPA or MMS) to select plan holders to lead or participate in these exercises.

Scheduling Workshop

A PREP scheduling workshop will be conducted by the NSCC annually in May. The workshop will focus primarily on the upcoming year's Area exercise schedule, but will also address issues relating to the following two years of the triennial schedule. National level industry representation is strongly encouraged at these workshops, as this will be an opportunity for industry plan holders to comment on the schedule and address issues which may affect them and their operations. This will also be an opportunity for the plan holders to comment on priorities for each exercise, particularly in instances when more than one plan holder expresses an interest in leading or participating in the same exercise, or when plan holders have been selected by the OSC for exercise participation. The workshops will be the forum for discussion and final selection of the industry plan holders to lead the Area exercises or participate in the government-led Area exercises. Input from the workshop will be used for finalizing the upcoming year's schedule and proposing the schedule for the following two years.

Workshop Format and Schedule

The workshop format will consist of a presentation of the PREP Area exercise schedule listed here, followed by a question and answer period and open discussion of the schedule and the scheduling process.

The workshop will be held on May 19, 1994, from 9 a.m. to 4 p.m., at the Best Western Old Colony Inn, 625 1st Street, Alexandria, Virginia.

Final Schedule

After the workshop is completed, the NSCC will forward information received from the workshop to the Coast Guard Districts/EPA Regions for distribution to the OSCs. The proposed final schedule will specify the exercise Area, the exercise dates, whether the exercise is government or industry-led, the type of industry participating, and the government and industry plan holders that will lead or participate in the exercises. The Coast Guard Districts/EPA Regions will coordinate with the OSCs to validate the schedule and comment back to the NSCC. Comments should be provided to the NSCC as soon as possible, but no later than August 1, to allow for timely publication of the final schedule. The Coast Guard will publish a final schedule in the Federal Register annually in September.

Proposed Triennial Schedule for 1995, 1996 and 1997

PREP SCHEDULE—1995

Area	Industry (I) or Government (G) Led	QTR*
Guam Area (MSO Guam OSC).	Vessel (I)	1
Southern Coastal NC Area (MSO Wilmington OSC).	CG (G)	1
San Diego, CA Area (MSO San Diego OSC).	Facility (Mtr) (I)	1
Maryland Coastal Area (MSO Baltimore OSC).	Vessel (I)	1
Portland, OR Area (MSO Portland, OR OSC).	CG (G)	2
EPA Regional III Area (EPA OSC).	Pipeline (I)	2
Long Island Sound, NY Area (COTP Long Island Sound OSC).	Vessel (I)	2
EPA Region I Area (EPA OSC).	Facility (non mtr) (I).	2
San Francisco Bay & Delta Region Area (MSO San Francisco OSC).	CG (G)	2
EPA Region II Area (EPA OSC).	Facility (non mtr) (I).	2
Boston, MA (MSO Boston OSC).	Vessel (I)	3
Cleveland, OH Area (MSO Cleveland OSC).	Facility (mtr) (I)	3
Sault Ste. Marie, MI Area (COTP Sault Ste. Marie OSC).	Vessel (I)	3
EPA Region V Area (EPA OSC).	EPA (G)	3

PREP SCHEDULE—1995—Continued

Area	Industry (I) or Government (G) Led	QTR*
Savannah Area (MSO Savannah OSC).	Vessel (I)	3
Southeast Alaska Area (MSO Juneau OSC).	Pipeline (I)	3
Tampa, FL Area (MSO Tampa OSC).	CG (G)	4
EPA Region X Area (EPA OSC).	Facility (non mtr) (I).	4
EPA Region VII Area (EPA OSC).	Facility (non mtr) (I).	4
South Texas Coastal Zone Area (MSO Corpus Christi OSC).	CG (G)	4

*Quarterly Schedule: 1 (January-March); 2 (April—June); 3 (July-September); 4 (October-December).

PREP SCHEDULE—1996

Area	Industry (I) or Government (G) Led	QTR*
Charleston, SC Area (MSO Charleston OSC).	CG (G)	1
Mobile, AL Area (MSO Mobile OSC).	Offshore (I)	1
Virginia Coastal Area (MSO Hampton Roads OSC).	Vessel (I)	1
Puget Sound Area (MSO Puget Sound OSC).	CG (G)	1
Grand Haven, MI Area (COTP Grand Haven OSC).	Vessel (I)	2
Santa Barbara/ Ventura Area (MSD Santa Barbara OSC).	Vessel (I)	2
EPA Region VIII Area (EPA OSC).	EPA (G)	2
Buffalo, NY Area (MSO Buffalo OSC).	Facility (mtr) (I)	2
Western Lake Erie Area (MSO Toledo OSC).	Facility (mtr) (I)	2
EPA Region VI Area (EPA OSC).	Pipeline (I)	2
South Florida Area (MSO Miami OSC).	CG (G)	3

PREP SCHEDULE—1996—Continued

Area	Industry (I) or Government (G) Led	QTR*
Western Alaska Area (MSO Anchorage OSC).	Pipeline (I)	3
EPA Region IX Area (EPA OSC).	Facility (non mtr) (I).	3
Duluth—Superior Area (MSO Duluth OSC).	Vessel (I)	3
Maine & New Hampshire Area (MSO Portland OSC).	Vessel (I)	3
Philadelphia Coastal Area (MSO Philadelphia OSC).	CG (G)	3
Palau Area (MS) Guam OSC).	Vessel (I)	4
Orange County Area (MSO LA/ LB OSC).	Facility (mtr) (I)	4
SW Louisiana—SE Texas Area (MSO Port Arthur OSC).	CG w/MMS (G).	4
EPA Region II Area (Caribbean) (EPA OSC).	Facility (non mtr) (I).	4

*Quarterly Schedule: 1 (January-March); 2 (April-June); 3 (July-September); 4 (October-December).

PREP SCHEDULE—1997

Area	Industry (I) or Government (G) Led	QTR*
Providence, RI Area (MSO Providence OSC).	CG (G)	1
Northeast North Carolina Coastal Area (MSO Hampton Roads OSC).	Vessel (I)	1
Jacksonville Area (MSO Jacksonville OSC).	CG (G)	1
Caribbean Area (MSO San Juan OSC).	Facility (mtr) (I)	1
Florida Panhandle Area (MSO Mobile OSC).	Vessel (I)	2
Morgan City Area (MSO Morgan City OSC).	CG (G)	2
Eastern Wisconsin Area (MSO Milwaukee OSC).	Facility (mtr) (I)	2

PREP SCHEDULE—1997—Continued

Area	Industry (I) or Government (G) Led	QTR*
Chicago Area (MSO Chicago OSC).	Facility (mtr) (I)	2
North Coast Area (MSO San Francisco OSC).	Vessel (I)	2
Commonwealth of N. Marianas Islands Area (MSO Guam OSC).	Vessel (I)	3
Detroit Area (MSO Detroit OSC).	CG (G)	3
EPA Alaska Region (EPA OSC).	Facility (non mtr) (I).	3
EPA Oceania Region (EPA OSC).	EPA (G)	3
Houston/Galveston Area (MSO Houston OSC).	Offshore (I)	3
New York, NY Area (COTP New York OSC).	Vessel (I)	3
Hawaii/American Samoa Area (MSO Honolulu OSC) Commanding Officer.	Vessel (I)	4
EPA Region IV Area (EPA OSC).	Facility (non mtr) (I).	4
Central Coast Area (MSO San Francisco OSC).	Vessel (I)	4
Los Angeles/ Long Beach Area (MSO Los Angeles OSC).	Vessel (I)	4
New Orleans Area (MSO New Orleans OSC).	CG w/ MMS (G).	4

*Quarterly Schedule: 1 (January-March); 2 (April-June); 3 (July-September); 4 (October-December).

Dated: March 22, 1994.

R.C. North,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94-7102 Filed 3-24-94; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

March 21, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–1240.
Regulation ID Number: INTL–116–90 NPRM.
Type of Review: Revision.
Title: Allocation of Charitable Contributions.
Description: The recordkeeping requirement affects businesses or other for-profit institutions. This information is required by the IRS to ensure the proper application of section 1.861–8(e)(iv) of the regulations. This information will be used to verify the U.S. source of certain charitable contributions.
Respondents: Businesses or other for-profit.
Estimated Number of Recordkeepers: 1.
Estimated Burden Hours Per Recordkeeper: 1 hour.
Frequency of Response: Other.
Estimated Total Recordkeeping Burden: 1 hour.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–7074 Filed 3–24–94; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

March 21, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0191.
Form Number: ATF 5100.16.
Type of Review: Extension.
Title: Application for Transfer of Spirits and/or Denatured Spirits in Bond.
Description: ATF F 5100.16 is completed by distilled spirits plant proprietors who wish to receive spirits in bond from other distilled spirits plants. ATF uses the information to determine if the applicant has sufficient bond coverage for the additional tax liability assumed when spirits are transferred in bond.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 250.
Estimated Burden Hours Per Respondent: 12 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 300 hours.

OMB Number: 1512–0508.
Form Number: ATF F 5300.28 and ATF REC 5300/28.
Type of Review: Extension.
Title: Application for Registration for Tax-Free Transactions Under 26 U.S.C. 4221.
Description: Businesses, State and local governments, non-profit institutions and small businesses apply for registration to sell or purchase firearms or ammunition tax free on this form. ATF uses the form to determine an applicant's qualification.
Respondents: State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 125
Estimated Burden Hours Per Respondent: 3 hours.
Frequency of Response: Other (one-time).
Estimated Total Reporting Burden: 375 hours.

OMB Number: 1512–0509.
Form Number: ATF F 5300.27 and ATF REC 5300/27.
Type of Review: Extension.
Title: Federal Firearms and Ammunition Excise Tax Deposit.
Description: Businesses and individuals who manufacture firearms, shells or cartridges may be required to deposit Federal excise tax. ATF uses ATF F 5300.27 to identify the taxpayer and the tax deposit.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 440.
Estimated Burden Hours Per Respondent: 9 minutes.
Frequency of Response: On occasion, Monthly, Other (semi-monthly).
Estimated Total Reporting Burden: 1,214 hours.
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–7075 Filed 3–24–94; 8:45 am]

BILLING CODE 4810–31–P

Sunshine Act Meetings

Federal Register
Vol. 59, No. 58
Friday, March 25, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. COMMISSION ON CIVIL RIGHTS

DATES AND TIME: March 31–April 1, 1994, 9:00 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW, Room 540, Washington, DC 20425.

STATUS: Open to the Public.

March 31–April 1, 1994

Agenda

I. Approval of Agenda
II. Approval of Minutes of February Meeting
III. Announcements
IV. Planning Retreat
V. Staff Director's Report
VI. New York Hearing Update
VII. Commissioner/Staff Communication
VIII. Future Agenda Items

Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact Betty Edmiston, Administrative Services and Clearinghouse Division (202) 376–8105 (TDD 202–376–8116) at least five (5) working days before the scheduled date of the hearing.

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Dated: March 22, 1994.

Emma Monroig,

Solicitor.

[FR Doc. 94–7196 Filed 3–23–94; 9:33 am]

BILLING CODE 6335–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Tuesday, March 29, 1994, 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Voluntary Standards/International Affairs

The staff will brief the Commission on voluntary standards and international affairs activities.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207, (301) 504–0800.

Dated: March 22, 1994.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 94–7239 Filed 3–23–94; 2:17pm]

BILLING CODE 6355–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Wednesday, March 30, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 23, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–7213 Filed 3–23–94; 11:01 am]

BILLING CODE 6210–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10:04 a.m. on Tuesday, March 22, 1994, the Corporation's Board of Directors determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Mr. Stephen R. Steinbrink, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of a memorandum and resolution regarding final amendments to Part 335 of the Corporation's rules and regulations, entitled "Securities of Nonmember Insured Banks," relating to registration and reporting requirements for nonmember insured banks with securities registered under section 12 of the Securities Exchange Act of 1934.

By the same majority vote, the Board further determined that no notice earlier than March 21, 1994, of the change in the subject matter of the meeting was practicable.

The meeting was held in the Board Room of the FDIC Building located at 500—17th Street, NW., Washington, DC.

Dated: March 22, 1994.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 94–7172 Filed 3–23–94; 8:51 am]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:21 a.m. on Tuesday, March 22, 1994, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of a certain insured depository institution.

Application of Andover Bank, Andover, Massachusetts, an insured State nonmember bank, for consent to merge, under its charter and title, with Community Savings Bank, Lawrence, Massachusetts, an insured State mutual savings bank which will convert to a State chartered stock savings bank prior to the merger transaction, and for consent to establish the four offices of Community Savings Bank as branches of Andover Bank.

Matters relating to the Corporation's supervisory and corporate activities.

In calling the meeting, the Board determined, on motion of Mr. Stephen R. Steinbrink, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days'

notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: March 22, 1994.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 94–7173 Filed 3–23–94; 8:51 am]

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federal register

Friday
March 25, 1994

Part II

Department of the Interior

Office of the Secretary

43 CFR Part 11

Natural Resource Damage Assessments; Final Rule

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

RIN 1090–AA22

Natural Resource Damage Assessments

AGENCY: Department of the Interior.
ACTION: Final rule.

SUMMARY: This final rule amends the regulations for assessing natural resource damages resulting from a discharge of oil into navigable waters under the Clean Water Act or a release of a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act. The Department of the Interior has previously developed two types of natural resource damage assessment regulations: standard procedures for simplified assessments requiring minimal field observation (the type A rule); and site-specific procedures for detailed assessments in individual cases (the type B rule).

This final rule revises the type B rule to comply with all but one aspect of a court order. This rule establishes a procedure for calculating natural resource damages based on the costs of restoring, rehabilitating, replacing, and/or acquiring the equivalent of injured resources. This rule also allows for the assessment of all use values of injured resources that are lost to the public pending completion of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. The Department will soon issue a new proposed rule to address assessment of lost nonuse values of injured resources.

EFFECTIVE DATE: The effective date of the final rule is April 25, 1994.

FOR FURTHER INFORMATION CONTACT: Mary C. Morton, Cecil Hoffmann, or David Rosenberger at (202) 208–3301.

SUPPLEMENTARY INFORMATION: This preamble is organized as follows:

I. Background
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C. Judicial Review
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N. Judicial Review of an Assessment
O. Use of Collected Damages
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I. Background

A. Statutory Provisions

The Clean Water Act, as amended (33 U.S.C. 1251 et seq.) (CWA) and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601 et seq.) (CERCLA) authorize natural resource trustees to recover compensatory damages for injury to, destruction of, or loss of natural resources resulting from a discharge of oil into navigable waters or a release of a hazardous substance. CWA sec. 311(f); CERCLA sec. 107. Federal and State officials may be designated to serve as natural resource trustees under CERCLA and CWA. CERCLA also recognizes the authority of Indian tribes to commence actions as natural resource trustees.

Damages may be recovered for those natural resource injuries and losses that are not fully remedied by response actions. All sums recovered in compensation for natural resource injuries must be used to restore, rehabilitate, replace, or acquire the equivalent of the injured natural resources. Trustee officials may also recover the reasonable costs of assessing natural resource damages and any prejudgment interest.

CERCLA requires the promulgation of two types of regulations for the assessment of natural resource damages resulting either from a discharge of oil under CWA or from a release of a hazardous substance under CERCLA. CERCLA sec. 301(c). The type A regulations provide standard procedures for simplified assessments requiring minimal field observation. The type B regulations provide site-specific procedures for detailed assessments. Both regulations identify the best available procedures for determining natural resource damages. Assessments performed by Federal and State trustee officials in accordance with these regulations receive a rebuttable presumption in court. CERCLA sec. 107(f)(2)(C). The promulgation of these regulations was delegated to the Department of the Interior (the Department). E.O. 12316, as amended by E.O. 12580.

The Oil Pollution Act (33 U.S.C. 2701 et seq.) (OPA) was signed into law on August 18, 1990. Among other things, OPA amended the natural resource damage provisions of CWA. OPA authorized the National Oceanic and Atmospheric Administration (NOAA) to develop new natural resource damage assessment regulations for discharges of oil into navigable waters. The Department is coordinating its rulemakings with NOAA to ensure, to the maximum extent possible, that consistent processes are established for assessing natural resource damages under CERCLA and OPA. OPA provides that until NOAA develops its regulations, the Department's regulations may be used to assess natural resource damages under OPA. OPA sec. 6001(b). NOAA published a proposed natural resource damage assessment rule on January 7, 1994. 59 FR 1062.

B. Regulatory History

The Department has issued various final rules for the assessment of natural resource damages: 51 FR 27674 (Aug. 1, 1986); 52 FR 9042 (March 20, 1987); 53 FR 5166 (Feb. 22, 1988); and 53 FR 9769 (March 25, 1988). These rulemakings are all codified at 43 CFR part 11.

The natural resource damage assessment regulations provide an administrative process for conducting assessments as well as technical methods for the actual identification of injuries and calculation of damages. Under the regulations, both type A and type B, assessments consist of four major phases.

The first phase of an assessment conducted under the regulations involves the activities that precede the actual assessment. For example, upon detecting or receiving notification of a discharge or release, trustee officials perform a preassessment screen to ascertain whether further assessment actions are warranted.

The second phase involves the preparation of an Assessment Plan. The Assessment Plan, which is subject to public review and comment, assists the involvement of potentially responsible parties (PRPs), other trustee officials, the general public, and any other interested

parties. The Assessment Plan also ensures that assessments are performed at a reasonable cost.

In the third phase, trustee officials conduct the work described in the Assessment Plan. The work involves three steps: Injury Determination; Quantification; and Damage Determination. In Injury Determination, trustee officials determine whether any natural resources have been injured. If trustee officials determine that resources have been injured, they proceed to Quantification, in which they quantify the resulting reduction in services provided by the resources. Finally, in Damage Determination, trustee officials calculate the monetary compensation to be sought as damages for the natural resource injuries.

In a type A assessment, trustee officials perform Injury Determination, Quantification, and Damage Determination through the use of standardized procedures involving minimal field work. The Department has adopted a phased approach to developing type A procedures for different environments. Only one type A rule has been developed to date. The existing type A rule provides for the use of a computer model to assess damages from small releases or discharges in coastal or marine environments. For other releases or discharges, trustee officials conduct a type B assessment, in which Injury Determination, Quantification, and Damage Determination are performed through the use of a range of alternative scientific and economic methodologies.

The fourth phase of every natural resource damage assessment, whether the type A or type B rule is followed, consists of post-assessment activities such as: Preparation of a Report of Assessment; establishment of an account for damage assessment awards; and development of a Restoration Plan for use of the awards.

C. Judicial Review

A party may petition the Court of Appeals for the District of Columbia Circuit to review any regulation issued under CERCLA. CERCLA sec. 113(a). A number of parties filed such petitions for review of the natural resource damage assessment regulations. The type A rule was challenged in *State of Colorado* v. *United States Department of the Interior*, 880 F.2d 481 (D.C. Cir. 1989) (*Colorado* v. *Interior*). The type B rule was challenged in *State of Ohio* v. *United States Department of the Interior*, 880 F.2d 432 (D.C. Cir. 1989) (*Ohio* v. *Interior*).

The court in *Ohio* v. *Interior* upheld various challenged aspects of the type B rule but did remand three issues. The court ordered the Department to revise the rule to reflect the statutory preference for using restoration costs as the measure of natural resource damages. The court used the term "restoration costs" to encompass the cost of restoring, rehabilitating, replacing, and/or acquiring the equivalent of the injured natural resources. The court also ordered the Department to revise the rule to allow for the recovery of all reliably calculated lost values of injured natural resources, including both lost use values and lost nonuse values, with no specific hierarchy of methodologies required of trustee officials in estimating those values. Use values are derived through activities such as hiking or fishing. Nonuse values are not dependent on use of the resource. Nonuse values include existence value, which is the value of knowing that a resource exists, and bequest value, which is the value of knowing that a resource will be available for future generations. Finally, the court asked the Department to clarify whether the natural resource damage assessment regulations apply to natural resources that are not actually owned by the government.

D. Implementation of the Court Order

The Department published an advance notice of proposed rulemaking on September 22, 1989, to announce its intent to revise the type B rule to comply with *Ohio* v. *Interior*. 54 FR 39016. The Department issued a proposed rule on April 29, 1991, with comments requested by June 28, 1991. 56 FR 19752. On July 2, 1991, the Department extended the comment period to July 16, 1991. 56 FR 30367. On July 22, 1993, the Department reopened the comment period to allow consideration of additional comments, including newly developed information on the contingent valuation methodology (CV), the only method currently available for the express purpose of estimating nonuse values. 58 FR 39328. The comment period was originally reopened until September 7, 1993, and then extended until September 22, 1993. 58 FR 45877 (Aug. 31, 1993).

After reviewing the comments received in response to the July 22, 1993, **Federal Register** notice, the Department has decided to issue a final rule addressing all aspects of the *Ohio* v. *Interior* remand other than the assessment of lost nonuse values. The Department is considering revising the type B rule to include certain standards to improve the reliability of CV when used to calculate lost nonuse values. In order to ensure that interested parties have an adequate opportunity for review and comment, the Department will soon publish the standards in a notice of proposed rulemaking. Pending completion of that rulemaking, the Department is temporarily leaving unchanged the remanded language of the original type B rule concerning assessment of lost nonuse values.

E. Other Rulemakings

CERCLA mandates biennial review and revision, as appropriate, of the natural resource damage assessment regulations. The Department plans to publish an advance notice of proposed rulemaking to begin the biennial update of the type B rule in July 1994. All aspects of the administrative process and the type B rule will be subject to review during that update. During the biennial review, the Department will consider ways of ensuring the greatest possible consistency between its damage assessment regulations and the damage assessment regulations being developed by NOAA.

Further, the Department plans to publish a proposed rule to revise the type A procedure for coastal and marine environments in compliance with *Colorado* v. *Interior* in November 1994. The Department is also developing an additional type A procedure for assessing damages in the Great Lakes. Like the type A procedure for coastal and marine environments, the type A procedure for the Great Lakes will incorporate a computer model. The Department expects to publish a proposed rule for the type A procedure for the Great Lakes in August 1994.

II. Overview of This Final Rule

A. Measure of Damages

The type B rule as originally published on August 1, 1986, provided that damages consisted of the lesser of the cost of restoring the injured resources or the diminution in the value of the injured resources without restoration. In *Ohio* v. *Interior*, the court ordered the Department to revise the rule to reflect the statutory preference for using restoration costs as the measure of natural resource damages. CERCLA provides that sums recovered in natural resource damage actions may be used to restore, rehabilitate, replace, or acquire the equivalent of the injured natural resources. The court used the simple term "restoration" costs as shorthand for the cost of performing any of these actions. 880 F.2d at 441. In many cases, trustee officials will likely use damage awards to fund some combination of these actions, rather

than only one. Therefore, the final rule allows trustee officials to recover the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources in all cases.

The court recognized the Department's authority to establish

> * * * some class of cases where other considerations—i.e. infeasibility of restoration or grossly disproportionate cost to use value—warrant a [measure of damages other than the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources]. Id. at 459.

However, the Department believes that trustee officials will always perform some, albeit occasionally minor, form of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. Even in situations where natural recovery is the preferred action, trustee officials will nonetheless incur some costs, such as the expense of restricting public access or taking other actions to ensure that natural recovery is not impeded. Therefore, the final rule does not include any exceptions to the basic measure of damages. Moreover, the rule also provides trustee officials with the discretion to add to the basic measure of damages the value of the resource services lost to the public from the date of the discharge or release until restoration, rehabilitation, replacement, and/or acquisition of equivalent resources has been completed.

B. Restoration and Compensation Determination Plan

To assist trustee officials in developing claims under the new measure of damages, the rule provides for the development of a Restoration and Compensation Determination Plan. The Restoration and Compensation Determination Plan replaces the Restoration Methodology Plan discussed in the original version of the rule. The Restoration and Compensation Determination Plan is designed to focus the scope of Damage Determination. The Restoration and Compensation Determination Plan is part of the overall Assessment Plan and, thus, subject to public review and comment.

1. Selection of a Restoration, Rehabilitation, Replacement, and/or Acquisition Alternative

Since damages are based on the costs of restoring, rehabilitating, replacing, and/or acquiring the equivalent of the injured resources, trustee officials need a mechanism for projecting these costs. The rule includes a procedure for selecting a restoration, rehabilitation, replacement, and/or acquisition alternative that can be used in this projection.

Under the rule, trustee officials first identify and consider a reasonable number of possible alternatives for restoring, rehabilitating, replacing, and/or acquiring the equivalent of the injured resources. Trustee officials also estimate those services that are likely to be lost to the public pending completion of each alternative under consideration. Trustee officials then select one of the possible alternatives. The rule lists factors that trustee officials must consider during the selection. The relative weight of these factors is left to the discretion of the trustee officials. Trustee officials document their decisions in the Restoration and Compensation Determination Plan.

2. Calculation of the Costs of Restoration, Rehabilitation, Replacement, and/or Acquisition of Equivalent Resources

Once the trustee officials select a restoration, rehabilitation, replacement, and/or acquisition alternative, they must choose the methods they intend to use to estimate the costs of implementing that alternative. To do this, trustee officials select among the specific cost estimating methodologies provided in the rule. The rule provides a number of criteria to guide the selection of cost estimating methodologies, including a requirement that the chosen methodologies are reliable for the particular incident and type of damage being measured. Trustee officials include the rationale for their selection in the Restoration and Compensation Determination Plan.

3. Calculation of Compensable Value

Under this rule, the costs of restoring, rehabilitating, replacing, and/or acquiring the equivalent of the injured resources are the basic measure of damages; however, these costs are only one component of the damages that trustee officials may assess. Trustee officials also have the discretion to assess the value of the services that the public lost from the date of the release or discharge until completion of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. The final rule uses the term "compensable value" to encompass all of the lost public economic values, including lost use values and lost nonuse values such as existence and bequest values. The Restoration and Compensation Determination Plan includes a description of the valuation methodologies trustee officials intend to use when estimating compensable value during Damage Determination.

a. *Use values.* The original type B rule provided a ranked list of valuation methodologies that could be used to calculate lost use values. If the market for the injured resource was "reasonably competitive," then the diminution of the market price attributable to the discharge or release was used to estimate damages. If a market-price methodology was not available, then the trustee officials were required to use appraisal methodologies. Only when neither market-price nor appraisal methodologies were appropriate for the resources being assessed did the original version of the rule allow trustee officials to use non-market-based methodologies.

The court ruled that the hierarchy of valuation methodologies incorrectly established a strong presumption in favor of market-price and appraisal methodologies. The proposed rule continued to rank valuation methodologies according to reliability but allowed trustee officials to use any of the methodologies whenever they wanted, notwithstanding the ranking. In light of potential confusion over the practical effect of the ranking in the absence of any restrictions on trustee officials' selections, the Department has eliminated the ranking from the final rule. The final rule leaves trustee officials free to choose any of the specified valuation methodologies. The rule provides a number of criteria to guide the selection of valuation methodologies, including a requirement that the chosen methodologies are reliable for the particular incident and type of damage being measured. Trustee officials include the rationale for their selection in the Restoration and Compensation Determination Plan.

b. *Nonuse values.* Sections 11.83(b)(2) and 11.83(d)(5)(ii) of the original version of the type B rule provided that lost nonuse values could only be assessed if trustee officials could not determine any lost use values. In the August 1, 1986, preamble to the original type B rule, the Department provided the following explanation for this restriction:

> Ordinarily, option and existence values would be added to use values. However, section 301(c) of CERCLA mentions only use values. Therefore, the primary emphasis in this section is on the estimation of use values. 51 FR 27719.

Ohio v. *Interior* held that the Department had "erroneously construed the statute," stating:

> [S]ection 301(c)(2) requires Interior to "take into consideration factors including, *but not limited to* * * * use value." 42 U.S.C. § 9651(c)(2) (emphasis added). The statute's command is expressly not limited to use value; if anything, the language implies

that DOI is to include in its regulations other factors in addition to use value. 880 F.2d at 464.

The court went on to say that the Department—

> * * * is entitled to rank methodologies according to its view of their reliability, but it cannot base its complete exclusion of option and existence values on an incorrect reading of the statute. Id.

The court instructed the Department to consider a rule that would permit trustee officials to include all reliably calculated lost values in their damage assessments. Id.

CV is currently the only method available for the express purpose of estimating nonuse values. CV can also be used to calculate use values. Under the original type B rule, CV was listed as a non-market-based methodology for calculating either lost use values or lost nonuse values. *Ohio* v. *Interior* held that the Department's decision to include CV as a best available procedure was not improper. Id. at 478. However, the court did not require the Department to allow unlimited use of CV. Moreover, the court did not address the difference between use of CV to calculate lost use values and use of CV to calculate lost nonuse values.

The Department received numerous comments on the use of CV. These comments focused on use of CV to estimate lost nonuse values rather than lost use values. In the April 29, 1991, notice of proposed rulemaking, the Department stated that "[w]hen CVM is used to quantify use values alone, it is judged to be just as reliable as the other nonmarket valuation methodologies." 56 FR 19762. Commenters did not dispute this assertion and have not provided any information to the contrary, even though the Department specifically solicited "reviews of CVM that address its reliability for measuring use values" in the July 22, 1993, **Federal Register** notice. 58 FR 39329. Thus, this final rule allows trustee officials to use CV to assess lost use values subject only to the restrictions applicable to any of the listed methodologies for assessing lost use values. However, during the upcoming biennial review of the type B rule, the Department will reconsider whether additional standards for the use of CV to estimate lost use values are appropriate.

Nonuse values, unlike use values, are not linked to behavior and, thus, are more difficult to validate externally than use values. Therefore, the Department will soon be issuing a proposed set of standards to improve the reliability of CV when used to estimate lost nonuse values. This final rule renumbers §§ 11.83(b)(2) and 11.83(d)(5)(ii) of the original rule, which restrict the assessment of lost nonuse values to cases where lost use values cannot be determined, as new §§ 11.83(c)(1)(iii) and 11.83(c)(2)(vii)(B), respectively. However, pending completion of the rulemaking concerning assessment of lost nonuse values, the Department is temporarily leaving unchanged the language of renumbered §§ 11.83(b)(2) and 11.83(d)(5)(ii), which was remanded by *Ohio* v. *Interior*.

C. Resources Covered by the Natural Resource Damage Assessment Regulations

The final issue remanded by *Ohio* v. *Interior* concerns the scope of the resources covered by the rule. The rule as originally published incorporated the statutory definition of "natural resources." This definition encompasses any resource—

> Belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States * * *, any State or local government, any foreign government, or any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe. CERCLA sec. 101(16).

The court in *Ohio* v. *Interior* noted that, although CERCLA does not authorize recovery of damages for injuries to purely private resources, the statutory definition of "natural resources" is clearly not limited to resources literally owned by a government. 880 F.2d at 460. Similarly, in its oral argument in *Ohio* v. *Interior*, the Department recognized that applicability of CERCLA's natural resource damage provisions does not hinge solely on ownership. Id. at 461. However, the August 1, 1986, preamble to the final type B rule stated that "section 101(16) of CERCLA clearly indicates that privately owned natural resources are not to be included in natural resource damage assessments." 54 FR 27696. Therefore, the court asked the Department to clarify whether the natural resource damage assessment regulations may be used to assess damages for injuries to any resources that are not owned by the government.

The Department never intended to suggest that the applicability of the regulations hinges solely on ownership of a resource by a government entity. The rule is available for assessments of all natural resources covered by CERCLA, which under the plain language of the statute includes more than just resources owned by the government. Section 11.14(z), which was not affected by this rulemaking, incorporates the statutory definition of "natural resource." The rule does not interpret this statutory definition. This final rule does, however, add a requirement that trustee officials prepare statements explaining the bases for their assertions of trusteeship. This statement must be included both in the Notice of Intent to Perform an Assessment, which is sent to PRPs, and in the Assessment Plan, which is subject to public review and comment.

D. Other Significant Issues

This final rule addresses two additional issues related to the court order:

(1) Development of a preliminary estimate of damages; and

(2) The date of promulgation of the natural resource damage assessment regulations.

1. Preliminary Estimate of Damages

Under § 11.35 of the rule as originally published, the determination of the appropriate measure of damages was made in the Economic Methodology Determination. In the Economic Methodology Determination, trustee officials were required to estimate both the costs of restoring the injured resources and the diminution in the value of the injured resources without restoration. The smaller value served as the measure of damages. The Economic Methodology Determination was then used to help trustee officials develop an Assessment Plan.

Under this final rule, damages always include the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. Therefore, the Department has eliminated the Economic Methodology Determination. However, the Economic Methodology Determination served a function that is still relevant under the revised rule. CERCLA provides that trustee officials may recover the costs of performing an assessment, but only if those costs are reasonable. Under the definition of "reasonable cost" in § 11.14(ee), which was not affected by this rulemaking, the anticipated cost of the assessment must be expected to be less than the anticipated damage amount. Under the original rule, the damage estimates developed during the Economic Methodology Determination helped trustee officials design their Assessment Plans so that this standard was met. In order to continue assisting trustee officials in performing assessments at reasonable costs in the absence of the Economic Methodology Determination, this final rule requires trustee officials to prepare a preliminary estimate of damages before they begin the development of an Assessment Plan.

2. Date of Promulgation of the Natural Resource Damage Assessment Regulations

CERCLA provides that natural resource damage claims other than those involving Federal facilities or sites on the National Priorities List must be commenced by Federal and State trustee officials:

> * * * within 3 years after the later of the following:
>
> (A) The date of the discovery of the loss and its connection with the release in question.
>
> (B) The date on which regulations are promulgated under section 301(c). CERCLA sec. 113(g)(1).

Neither the language nor the legislative history of CERCLA defines the date of promulgation of the natural resource damage assessment regulations under section 301(c).

There has been considerable confusion over this statutory provision in the aftermath of *Ohio* v. *Interior* and *Colorado* v. *Interior*. The natural resource damage assessment regulations are designed to calculate a monetary damage figure for injuries to natural resources. *Ohio* v. *Interior* and *Colorado* v. *Interior* remanded a fundamental issue, namely the measure of damages. Until the court orders are fully implemented, trustee officials are left without a complete procedure for calculating damages consistent with the provisions of CERCLA. Therefore, the Department has amended the rule to clarify that for the purposes of section 113(g)(1) of CERCLA, the "date on which regulations are promulgated" is the date on which final rules revising both the type A rule and the type B rule in compliance with *Ohio* v. *Interior* and *Colorado* v. *Interior* are published.

III. Response to Comments

The Department received numerous comments on the July 22, 1993, Federal Register notice. The Department appreciates the time and effort expended by the commenters. This notice does not address any of the comments received concerning the use of CV to calculate lost nonuse values. Those comments will be addressed in the Department's upcoming notice of proposed rulemaking to revise the original language of the type B rule concerning the assessment of nonuse values.

With respect to comments outside the confines of the *Ohio* v. *Interior* remand, the Department has for now simply reproduced guidance provided in prior Federal Register notices and indicated that further clarification is beyond the scope of this rulemaking. During the upcoming biennial review, the Department will carefully consider all of the comments submitted during this rulemaking that were beyond the scope of the court remand. Commenters need not resubmit these comments during the biennial review.

A. General Comments Concerning this Rulemaking

1. Scope of This Rulemaking

Comment: Some commenters objected to the Department's decision to defer consideration of certain issues until the next biennial review. These commenters stated that all matters relating to the measure of damages should be addressed in this rulemaking.

Response: As was explained in the April 29, 1991, notice of proposed rulemaking, the Department decided to limit this rulemaking to the court order in light of the potentially wide-ranging issues that will be considered during the biennial review. The Department believes that it has considered all issues within the scope of the *Ohio* v. *Interior* remand.

2. Timing of This Rulemaking

Comment: Several commenters expressed concern that the Department was proceeding too slowly on implementation of *Ohio* v. *Interior* and *Colorado* v. *Interior* and commencement of the biennial review.

Response: Implementation of *Ohio* v. *Interior* and *Colorado* v. *Interior* and commencement of the biennial review have involved considerable, time-consuming analysis and coordination. The Department has been proceeding, and will continue to proceed, as expeditiously as possible.

3. Goal of This Rulemaking

Comment: One commenter stated that the Department had failed to articulate clear goals for this rulemaking. This commenter offered suggestions on possible goals, including promotion of timely, cost-effective restoration. Another commenter requested that the Department attempt to eliminate ambiguity and vagueness from the rule in order to reduce transaction costs.

Response: Section 11.11, which was not affected by this rulemaking, states that the purpose of the regulations is to provide standardized and cost-effective procedures for assessing natural resource damages. The Department has indicated that the primary goal of this particular rulemaking is to revise the type B rule to comply with *Ohio* v. *Interior*. The Department believes that promotion of timely, cost-effective restoration and elimination of ambiguity and vagueness are worthy objectives and has attempted to further those objectives to the extent possible within the context of addressing the court order. The Department will consider whether additional revisions are necessary during the upcoming biennial review.

4. Regulatory Impact Analysis

Comment: A few commenters disagreed with the Department's statement that this rulemaking is not "major" under Executive Order 12291 and, thus, does not require preparation of a Regulatory Impact Analysis. These commenters challenged a number of aspects of the Determination of Effects prepared for the proposed rule.

Response: Executive Order 12291 has been rescinded since the Department prepared the Determination of Effects for the proposed rule. This final rule has been reviewed under Executive Order 12866 and has been determined to constitute a significant regulatory action. However, because of the difficulty of evaluating the effects of alternatives to this rule, the Office of Information and Regulatory Affairs within the Office of Management and Budget has waived preparation of the assessments described in sections 6(a)(3)(B) and 6(a)(3)(C) of Executive Order 12866 for the final rule.

5. Status of Prior Unpublished Notice of Final Rulemaking

Comment: A number of commenters objected to the publication of the July 22, 1993, Federal Register notice on the ground that the Department had already sent a notice of final rulemaking to the Office of the Federal Register in January, 1993, that was never published.

Response: The Department acknowledges that its former Assistant Secretary-Policy, Management and Budget sent a notice of final rulemaking to the Office of the Federal Register in January, 1993. The Department retrieved the notice from the Office of the Federal Register before it was filed out of concern that proper procedures had not been followed in connection with its preparation. Most notably, the notice improperly referred to and relied upon information received outside the comment period and had not received proper Departmental clearance. The Department, therefore, believes it was appropriate to retrieve the notice and publish the July 22, 1993, Federal Register notice to reopen the comment period.

B. Overall Damage Assessment Process

1. Trustee Discretion

Comment: A number of commenters addressed the level of discretion that the proposed rule would afford trustee officials. Many commenters thought that trustee officials are in the best position to determine how to proceed at a specific site and praised the flexibility of the proposed rule. On the other hand, several commenters thought that the rule would delegate too much authority to trustee officials. These commenters stated that the language and legislative history of section 301(c) of CERCLA, through reference to "protocols," "best available procedures," and "most accurate and efficient procedures," require that the Department develop substantive objective standards. According to these commenters, the proposed rule relies upon subjective standards that will lead to arbitrary and capricious results. These commenters expressed concern that the Department was placing too much reliance on public review and comment to curb potential abuses of discretion by trustee officials.

Response: The Department believes the rule appropriately balances the need for objective procedures against the need for flexibility. In order to comply with the statutory requirement to identify best available procedures for assessing natural resource damages, the Department has developed a detailed, standardized process that incorporates a specific range of acceptable alternative methodologies. However, the type B rule was also intended to have broad application. Natural resource damage cases range from situations involving discrete injury of one resource caused by a small, incidental release of a single substance to incidents involving extensive injury of multiple resources caused by large, long-term releases of mixtures of substances. In light of the myriad of possible natural resource damage scenarios, a type B rule that mandates a particular course of action at each stage of every assessment would generally be unusable or result in unreasonable assessment costs. Therefore, in certain areas the rule allows trustee officials to use their best judgment.

Although trustee officials do have some discretion, the rule imposes a number of checks on that discretion. The rule requires trustee officials to document the rationale for their decisions. The rule also provides an opportunity for public comment and review of trustee officials' actions, which the Department believes will ensure a significant level of accountability for trustee officials. Also, the Department notes that all decisions made by trustee officials will ultimately be reviewable in court. Therefore, the rule includes criteria by which courts can evaluate trustee decisions.

2. Public and PRP Involvement

Comment: Several commenters voiced opinions about the opportunity for PRP and public participation in the assessment process. Some commenters stated that the proposed rule would provide an appropriate level of public and PRP participation. Other commenters thought that the Department should encourage earlier involvement of PRPs to encourage settlement and avoid duplication of effort. A few commenters suggested that the rule be revised to clarify that trustee officials are authorized to allow PRPs to conduct assessment work.

Response: This final rule does not affect the level or timing of PRP or public participation in the natural resource damage assessment process. The Department agrees that early participation of PRPs in the assessment process promotes amicable settlement of natural resource damage claims but does not think that any revisions of the rule are necessary in this regard.

Section 11.32(d) already provides trustee officials with the discretion to allow PRPs to conduct assessment work. However, as was stated in the August 1, 1986, preamble:

> The Department's intention has always been that the decision to allow or not to allow potentially responsible parties to participate in the implementation of the Assessment Plan should rest solely with the authorized official, or the lead authorized official, when appropriate.
>
> Furthermore, a decision to allow such participation should only be made when the authorized official believes that a fair and accurate damage assessment will result from the potentially responsible party's participation and will be ensured through adequate direction, guidance, and monitoring by the authorized official * * *. The Department emphasizes that any and all actions taken by potentially responsible parties to implement an Assessment Plan occur under the ultimate approval and authority of the authorized official acting as trustee. The potentially responsible party functions in a strictly ministerial role. The final choice of methodologies rests solely with the authorized official. 51 FR 27704.

Further clarification is beyond the scope of this rulemaking.

3. Separate Assessments for Each Injury

Comment: Some commenters stated that the rule should encourage trustee officials to perform separate assessments for each injury in order to facilitate settlement.

Response: Natural resources are generally highly interdependent. The selection of methods to address one injured resource will often affect the selection of methods to address other resources. Therefore, the rule leaves it to the discretion of the trustee officials whether separate assessments should be conducted for each injury. Further clarification is beyond the scope of this rulemaking.

4. Focus of Assessments

Comment: Some commenters stated that the Department should take precautions to ensure that trustee officials do not undertake unnecessary basic research when performing damage assessments. These commenters suggested that the Department provide a list of sources of existing scientific data and prohibit trustee officials from performing new research unless there are no existing data regarding the effect of the particular substance on the particular natural resources involved.

Response: As was noted in the August 1, 1986, preamble to the original type B rule:

> General research studies are not compensable under a damage assessment performed pursuant to this rule, since it is inappropriate that experimental research studies to advance general scientific understanding be included as a part of a specific natural resource damage claim. 51 FR 27710.

Further clarification is beyond the scope of this rulemaking.

C. Resources Covered by the Natural Resource Damage Assessment Regulations

Comment: There were numerous comments on the issue of the resources covered by the natural resource damage assessment regulations. Several commenters supported the Department's proposal not to define which privately owned resources are covered by the regulations. These commenters stated that the question of whether a particular resource is covered by the regulations is governed by a wide variety of Federal, State, local, and tribal laws that are constantly evolving. These commenters further stated that trustee officials are the most familiar with these laws and, therefore, are in the best position to determine whether a particular resource is covered by the regulations.

On the other hand, several commenters thought that the regulations should include some limits on the assessment of damages for injuries of privately owned resources in order to avoid overly broad claims and unnecessary litigation. Some of these commenters stated that the Department

had misinterpreted *Ohio* v. *Interior* and that the court did ask the Department to clarify which privately owned resources are covered by the regulations.

Response: The Department believes that the *Ohio* v. *Interior* court did not require or even request the Department to define precisely which privately owned resources are covered by the natural resource damage assessment regulations. The court merely asked for clarification of whether the Department intended the regulations to cover any non-government-owned resources.

The scope of resources covered by the natural resource damage assessment regulations is determined by section 101(16) of CERCLA, which defines "natural resources" as:

> [L]and, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States * * *, any State or local government, any foreign government, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe.

As the court noted, this definition, which is incorporated into § 11.14(z) of the rule, extends beyond resources that are actually owned by the government.

Use of the natural resource damage assessment regulations is not restricted to government-owned resources. Trustee officials can use the regulations to assess damages for all natural resources covered by CERCLA. The Department believes that no additional action is needed to comply with the court order.

Not only is development of a definition of the privately owned resources covered by the regulations not required by *Ohio* v. *Interior*, it is also impractical. The question of whether a trustee official can assess damages for a particular natural resource is governed by CERCLA. However, CERCLA provides that trustee officials can only recover damages for injuries to those resources that are related to them through ownership, management, trust, or control. These relationships are created by other Federal, State, local, and tribal laws. In light of the diversity of these other laws, the Department believes that the determination of whether a particular privately owned resource constitutes a natural resource under CERCLA is best addressed on a case-by-case basis.

The Department disagrees that lack of a definition of the privately owned resources covered by the regulations will result in overly broad claims and unnecessary litigation. This final rule requires a trustee official to prepare a statement explaining the basis for his or her assertion of trusteeship. This statement must be included both in the Notice of Intent to Perform an Assessment, which is sent to PRPs, and in the Assessment Plan, which is subject to public review and comment. These opportunities for early input from PRPs and the public provide both a check on the trustee officials' discretion and a means of resolving disputes prior to litigation. Other provisions of the regulations, such as the requirement that only committed public uses of resources be included in compensable value, provide additional protection against improper assertions of authority over private property.

Comment: There were also many comments on the Department's proposal to clarify that a trustee official's statement of his or her basis of authority is not entitled to a rebuttable presumption. Several commenters supported this proposal. These commenters noted that a trustee official's basis of authority is an issue of legal standing to sue rather than an issue of assessment of damages. These commenters also stated that it was particularly appropriate not to grant a rebuttable presumption to a trustee official's statement since the rule contained no standards for determining which privately owned resources are covered by this rule.

On the other hand, a number of commenters thought that the rebuttable presumption should apply to a trustee official's statement of his or her basis of authority. These commenters stated that one of the first steps that a trustee official takes in an assessment is the determination of whether the affected resources fall under his or her trusteeship. These commenters noted that nothing in CERCLA indicates that this rule should restrict the rebuttable presumption to certain aspects of an assessment.

Response: In light of the fact that the Department has decided not to provide guidance on the scope of resources covered by the regulations, the Department does not believe that a trustee official's statement of authority should be given a rebuttable presumption. Section 11.31(a)(2) has been revised to clarify this point.

Comment: One commenter noted that in the July 22, 1993, **Federal Register** notice, the Department referred to the "Federal, State, local, and tribal laws" that give rise to trusteeship. The commenter sought clarification of whether local governments could bring natural resource damage claims and whether States could bring natural resource damage claims on behalf of local governments.

Response: The Department refers to local laws that may give rise to trusteeship because the statutory definition of "natural resource" mentions resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by any local government. This rule does not address local governments' standing to sue for natural resource damages. However, at least one court has held that a local government could not bring a natural resource damage claim, relying in part on State law. *Werlein* v. *United States*, 746 F. Supp. 887, 910 (D. Minn. 1990). *Ohio* v. *Interior* states that CERCLA allows State trustee officials to recover damages for injured resources owned by, managed by, appertaining to, or otherwise controlled by a local government. 880 F.2d at 460 n. 43.

Comment: Some commenters requested that the rule be revised to require trustee officials to provide detailed statements of authority.

Response: The Department believes that a trustee official's statement of authority, like all statements required under the regulations, should be detailed enough to provide PRPs, other trustee officials, the general public, any other interested parties, and ultimately the courts with an adequate opportunity to evaluate the statement. The level of detail may vary depending on the resources involved. The Department does not believe that any revision of the rule is necessary.

Comment: A few commenters had questions about the application of the rule to specific resources. One commenter asked the Department to clarify that a tribal trustee official has authority to assert claims for natural resource damages no matter where the natural resources are located so long as the trustee official can establish trusteeship.

Response: Nothing in these regulations prevents a Federal, State, or tribal trustee official from assessing damages for injuries to any natural resources, regardless of their location, so long as the trustee official can establish trusteeship over the resource.

Comment: Other commenters raised questions about the Department's discussion of cultural and archaeological resources. Some commenters disagreed with the Department's statement that cultural and archaeological resources do not constitute natural resources under CERCLA. Other commenters agreed that such resources are not natural resources. However, these commenters disagreed with the Department's statement that trustee officials are allowed to factor the loss of archaeological and cultural

attributes of a natural resource into a natural resource damage assessment through consideration of the loss of services provided by that natural resource. These commenters stated that consideration of archaeological and cultural services provided by a natural resource was tantamount to treating archaeological and cultural resources as natural resources in violation of the statute. One commenter requested that the Department clarify that an injury to an archaeological or cultural resource in and of itself is not a basis for a natural resource damage claim.

Response: As was explained in the July 22, 1993, **Federal Register** notice, the Department acknowledges the confusion that has arisen as a result of multiple uses and meanings of the term "resource" under different statutes. "Archaeological" and other "cultural" resources are not "land, fish, wildlife, biota, air, water, ground water, drinking water supplies, [or] other such resources." Therefore, "archaeological" and "cultural" resources do not constitute "natural" resources under CERCLA.

Nevertheless, although archaeological and cultural resources, as defined in other statutes, are not treated as "natural" resources under CERCLA, the rule does allow trustee officials to include the loss of archaeological and other cultural services provided by a natural resource in a natural resource damage assessment. For example, if land constituting a CERCLA-defined natural resource contains archaeological artifacts, then that land might provide the service of supporting archaeological research. If an injury to the land causes a reduction in the level of service (archaeological research) that could be performed, trustee officials could recover damages for the lost service. Further clarification is beyond the scope of this rulemaking.

D. Trustee Coordination

Comment: There were several comments concerning trustee coordination. A number of commenters wrote in support of the trustee coordination provisions in the rule. A few commenters thought that the rule should place greater emphasis on trustee coordination and provide additional guidance on how trustee officials can coordinate most effectively.

Response: Trustee coordination is discussed in § 11.32(a)(1), which was not affected by this rulemaking. Further clarification is beyond the scope of this rulemaking.

Comment: Several commenters raised questions about designation of a lead authorized official. Some commenters asked the Department to revise § 11.32(a)(1)(ii)(A) to prohibit an official from an agency that is both a trustee and a PRP from being designated as the lead authorized official. Another commenter stated that the lead authorized official should be selected on a case-by-case basis according to which agency has the greatest interests at stake.

Response: Revision of the procedures for appointing a lead authorized official contained in § 11.32(a)(1)(ii)(A) is beyond the scope of this rulemaking.

Comment: One commenter questioned why the Department had raised the issue of collateral estoppel in the July 22, 1993, **Federal Register** notice.

Response: The Department referred to collateral estoppel in response to a comment. The commenter thought that requiring Federal trustee officials to use the natural resource damage assessment regulations would eliminate collateral estoppel problems. The Department responded that revising the optional nature of the regulations was beyond the scope of this rulemaking and, moreover, would not necessarily resolve potential collateral estoppel problems.

E. Preliminary Estimate of Damages

Comment: The commenters who addressed the issue of the preliminary estimate of damages agreed that an estimate of damages is needed to determine the proper scope of an assessment and to ensure the reasonableness of assessment costs. Several commenters thought that trustee officials should be required to disclose the preliminary estimate as soon as possible to ensure that the public and the PRPs have an opportunity to comment on the reasonableness of projected assessment costs. One commenter stated that trustee officials should be required to consult with the PRPs when developing the preliminary estimate.

Response: The Department believes that premature disclosure of the preliminary estimate might adversely affect the ability of trustee officials to settle or litigate a natural resource damage case. Therefore, the Department has revised the language of proposed § 11.35(d)(3) to clarify that trustee officials need not disclose the preliminary estimate until the assessment has been completed.

Even though the preliminary estimate is not disclosed until the end of the assessment, PRPs and the general public will still have a meaningful opportunity to comment on the reasonableness of assessment costs. Under § 11.14(ee), which was not affected by this rulemaking, the relationship between anticipated damages and anticipated assessment costs is only one factor of reasonable costs. Another factor is whether all aspects of the assessment directly contribute to the calculation of a monetary damage figure. The public and the PRPs need not know the preliminary estimate of damages to comment on whether an assessment satisfies this factor of reasonableness. Moreover, after the assessment has been completed, trustee officials are required to include the preliminary estimate in the Report of Assessment, which will allow PRPs and courts to evaluate whether anticipated damages exceeded anticipated assessment costs.

Nothing in the rule prevents trustee officials from consulting with PRPs during the development of the preliminary estimate. However, the Department believes that requiring trustee officials to do so could adversely affect their ability to settle or litigate their claims.

Comment: Some commenters thought that the preliminary estimate should always be completed before publication of the Assessment Plan. Other commenters thought that the Department should provide additional guidance on when delay of preparation of a preliminary estimate would be warranted.

Response: The Department acknowledges the importance of the preliminary estimate in ensuring that the Assessment Plan is appropriately focused. However, the Department believes that trustee officials should have discretion to delay completion of the preliminary estimate until the end of Injury Determination if insufficient data exist upon which to base an estimate. The Department realizes that in some cases the injuries might be so complex or the existing data might be so sparse that any preliminary estimate of damages would be meaningless until Injury Determination is complete. The Department does not believe that additional guidance on this topic is needed.

Comment: A few commenters suggested that trustee officials be allowed to develop a range of preliminary estimates rather than one specific estimate. These commenters expressed concern that if required to develop a specific number, trustee officials would be likely to develop a high preliminary estimate, which would then encourage them to find damages at least as high as the preliminary estimate, regardless of the actual damages.

Response: The Department does not think that a range of preliminary estimates would provide an adequate standard for evaluating whether

assessment costs are reasonable. Also, the Department does not believe that development of a specific preliminary estimate will encourage trustee officials to develop exaggerated damage claims, particularly since the preliminary estimate of damages may be revised as new information becomes available.

F. Reasonable Cost of an Assessment

Comment: A number of commenters expressed support for the existing definition of "reasonable cost." However, other commenters thought that the definition should be revised so that the reasonableness of assessment costs is determined by comparing the cost of each component of the assessment to the anticipated damages to be determined by that component.

Response: The definition of "reasonable cost" contained in § 11.14(ee) was upheld in *Ohio* v. *Interior* after thorough review. Revision of the definition is beyond the scope of this rulemaking.

Comment: A few commenters suggested that the Department add a list of specific practices that would render assessment costs unreasonable.

Response: Section 11.15(a)(3) of the rule specifies different types of expenses that constitute reasonable costs of an assessment. The only revision to § 11.15(a)(3) that is being made in this rulemaking is a substitution of the phrase "restoration" with the phrase "restoration, rehabilitation, replacement, and/or acquisition of equivalent resources." Additional changes to § 11.15(a)(3) are beyond the scope of this rulemaking.

Comment: One commenter expressed concern that trustee officials might sacrifice scientific accuracy in order to meet the standards of reasonable cost.

Response: The Department believes that the rule adequately ensures scientific accuracy. Also, as discussed above, the definition of "reasonable cost" contained in § 11.14(ee) was upheld in *Ohio* v. *Interior* after thorough review.

Comment: Some commenters stated that reasonable assessment costs should include attorneys' fees. A few commenters thought that if attorneys' fees were included as recoverable assessment costs, then the Department should clarify that trustee officials may recover only those attorneys' fees necessary for the assessment not those related to preparation and litigation of a natural resource damage claim. One commenter expressed confusion about what the Department meant when it stated in the July 22, 1993, **Federal Register** notice that trustee officials may recover only those costs that are associated with the actual assessment.

Response: As noted in the August 1, 1986, and the July 22, 1993, **Federal Register** notices, the Department believes that trustee officials will generally need the assistance of an interdisciplinary team of experts when performing natural resource damage assessments. The rule does not restrict recoverable assessment costs to the expenses of particular types of professionals. Section 11.60(d)(2), which was not affected by this rulemaking, provides that recoverable assessment costs are "limited to those costs incurred or anticipated by the authorized official for, and specifically allocable to, site specific efforts taken in the assessment of damages." Therefore, if attorneys are involved in work specifically allocable to an assessment, the resulting attorneys' fees are recoverable as assessment costs under the rule. The rule does not address the recovery of attorneys' fees incurred in litigation over the results of the damage assessment, as opposed to those incurred during the assessment itself.

G. Calculation of Baseline

Comment: There were a variety of comments about the calculation of baseline. A number of commenters supported the Department's proposal to revise § 11.82(b)(1)(i) to clarify that baseline represents the conditions that would have existed had the release or discharge not occurred rather than the conditions that existed prior to the discharge or release.

Response: As noted in the July 22, 1993, **Federal Register** notice, the definition of baseline, which was not affected by this rulemaking, is set forth at § 11.14(e):

> Baseline means the condition or conditions that would have existed at the assessment area had the discharge of oil or the release of the hazardous substance under investigation not occurred.

Section 11.82(b)(1)(i) of the proposed rule inadvertently described restoration and rehabilitation actions as actions taken to return a resource to baseline as measured by "the services previously provided." Section 11.82(b)(1)(i) of the final rule has been revised to conform with the definition in § 11.14(e).

Comment: A number of commenters sought additional guidance on how to determine baseline in industrial areas, particularly how to distinguish the effects of the release or discharge in question from the effects of other conditions.

Response: Sections 11.72(c) through (k), which were not affected by this rulemaking, provide considerable guidance on the calculation of baseline. Additional clarification is beyond the scope of this rulemaking.

Comment: There were a few comments about the discussion in the July 22, 1993, **Federal Register** notice concerning the appropriate baseline for a river that in addition to being injured by a hazardous substance release also regularly receives sewer overflows that do not constitute hazardous substance releases under CERCLA. Some commenters noted that the Department stated that the effects of the sewer overflows did not render restoration, rehabilitation, replacement, and/or acquisition of equivalent resources pointless but did affect the baseline condition that must be reestablished. These commenters sought additional clarification that PRPs could not be held liable for the cost of restoring, rehabilitating, replacing, and/or acquiring fish if the sewer overflows would kill any stocked fish.

Response: Baseline conditions are those that would have existed had the release or discharge in question not occurred. In the hypothetical case offered by the commenters, PRPs' liability for stocking fish depends on whether fish would have existed in the river but for the release in question. If fish would not survive in the river regardless of whether the release had occurred, then PRPs would not be liable for the cost of stocking fish.

H. Measure of Damages

Comment: There were a number of comments on the proposed measure of damages. Several commenters supported the proposal to allow trustee officials to recover compensable value in addition to restoration, rehabilitation, replacement, and/or acquisition costs. However, many others thought that allowing recovery of compensable value in addition to restoration, rehabilitation, replacement, and/or acquisition costs violated the *Ohio* v. *Interior* holding that restoration costs are the preferred measure of damages. These commenters stated that compensable value should only be recovered when restoration, rehabilitation, replacement, and/or acquisition of equivalent resources is infeasible or poses grossly disproportionate costs.

Response: The Department believes that providing trustee officials with the discretion to assess compensable value is consistent with the holding in *Ohio* v. *Interior* because it will help ensure that the public is more fully compensated for injuries to natural resources. *Ohio* v. *Interior* did hold that restoration costs are the preferred

measure of damages. However, nothing in the decision prohibits the Department from allowing trustee officials to assess compensable values in addition to restoration, rehabilitation, replacement, and/or acquisition costs. In fact, the court explicitly stated that "Congress intended the damage assessment regulations to capture fully all aspects of loss." 880 F.2d at 463. Further, even under § 11.81(b) of the original rule, claims based on restoration costs could include damages for diminution of use values during the recovery period.

Comment: Some commenters stated that even if the Department decides to allow assessment of compensable value for CERCLA claims, it should not allow assessment of compensable value for CWA claims. These commenters stated that unlike section 107(a)(C) of CERCLA, which imposes liability for "damages for injury to, destruction of, or loss of natural resources," section 311(f)(4) of CWA merely refers to the "costs of removal," which include "any costs incurred by the Federal government or any State government in the restoration or replacement of natural resources." Furthermore, these commenters stated that nothing in the legislative history of CWA suggests that lost use values were intended to be recoverable.

Response: Although the specific issue raised by these commenters was not remanded by *Ohio* v. *Interior* and is not within the scope of this rulemaking, the Department believes that compensable values are recoverable under CWA. CWA provides that damages "shall include any costs or expenses incurred by the Federal government or any State government in the restoration or replacement of natural resources damaged or destroyed." CWA sec. 311(f)(4). Similarly, CERCLA provides that damages "shall not be limited by the sums which can be used to restore or replace such resources." CERCLA sec. 107(f)(1). The court in *Ohio* v. *Interior* compared these two provisions and concluded:

> These directives are in harmony: restoration is the basic measure of damages, but damages can exceed restoration cost in some cases. 880 F.2d at 450.

Comment: Several commenters stated that CERCLA, *Ohio* v. *Interior*, and *Commonwealth of Puerto Rico* v. *SS Zoe Colocotroni*, 628 F.2d 652 (1st Cir. 1980), *cert. denied*, 450 U.S. 912 (1981) (*Puerto Rico* v. *SS Zoe Colocotroni*), require inclusion of an exception from the basic measure of damages when restoration, rehabilitation, replacement, and/or acquisition costs are grossly disproportionate to the lost value of the resource. A number of these commenters disagreed with the Department's statements in the July 22, 1993, **Federal Register** notice that no exceptions were needed because some form of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources will always be performed.

One commenter questioned the Department's statement in the July 22, 1993, **Federal Register** notice that consideration of the factors set forth in proposed § 11.83(a)(3) would ensure that trustee officials do not select inappropriate restoration, rehabilitation, replacement, and/or acquisition alternatives. This commenter observed that proposed § 11.83(a)(3) addresses selection of cost estimating and valuation methodologies rather than selection of a restoration, rehabilitation, replacement, and/or acquisition alternative.

A number of other commenters opposed the creation of an exception for grossly disproportionate restoration, rehabilitation, replacement, and/or acquisition costs. Some of these commenters urged the Department to use caution if such an exception were adopted. One commenter requested that the Department bear in mind the special spiritual and cultural significance of natural resources to Indian tribes when developing any such exception. Other commenters urged the Department to base any such exception on a comparison of restoration, rehabilitation, replacement, and/or acquisition costs to the total value of the resources in question rather than the values of the resources lost as a result of the injuries.

Response: The Department believes it is not necessary to create an exclusion from the basic measure of damages when restoration, rehabilitation, replacement, and/or acquisition costs are grossly disproportionate to the lost value of the injured resources. The Department agrees that when trustee officials evaluate a particular restoration, rehabilitation, replacement, and/or acquisition alternative, they should consider the relationship between the costs of implementing that alternative and the lost value of the resource. However, if the costs of implementing a particular alternative do greatly exceed the lost value of the resource, trustee officials need not eliminate restoration, rehabilitation, replacement, and/or acquisition of equivalent resources as a basis for damages but should instead select a less costly method of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. Therefore, § 11.83(a)(3) provides a number of factors for trustee officials to consider when selecting a restoration, rehabilitation, replacement, and/or acquisition alternative. These factors, when considered together, protect against the selection of an alternative that poses grossly disproportionate costs.

As noted in the July 22, 1993, **Federal Register** notice, the Department does not agree that CERCLA, *Ohio* v. *Interior*, or *Puerto Rico* v. *SS Zoe Colocotroni* mandate an exclusion from the basic measure of damages when restoration, rehabilitation, replacement, and/or acquisition costs are grossly disproportionate to the lost value of the injured resources. CERCLA and *Ohio* v. *Interior* grant the Department the discretion to develop exceptions to the basic measure of damages but do not require such exceptions. *Puerto Rico* v. *SS Zoe Colocotroni* arose under a Puerto Rican statute, and although the case does contain dicta concerning CWA, it did not establish any standards for damages under either CWA or CERCLA.

Furthermore, *Puerto Rico* v. *SS Zoe Colocotroni* focused on whether damages should be based on the costs of implementing a plan to dig up and replant an oiled mangrove forest instead of relying upon natural recovery. The court rejected the plan as "impractical, inordinately expensive, and unjustifiably dangerous to the healthy mangroves and marine animals still present in the area to be restored." 628 F.2d at 676.

This rule neither requires nor authorizes trustee officials to pursue intensive activities to restore or rehabilitate an injured resource if such activities would be impractical, inordinately expensive, and unjustifiably dangerous. Under the rule, trustee officials evaluate a range of alternatives, including an alternative based on natural recovery, under a set of factors, including technical feasibility, cost-benefit considerations, cost-effectiveness, and potential for additional injury. The rule allows trustee officials to rely upon natural recovery when appropriate. If trustee officials decide to rely on natural recovery, they will still incur restoration, rehabilitation, replacement, and/or acquisition costs because they will take some sort of action, such as restricting public access or monitoring, to ensure that natural recovery is not impeded.

In the July 22, 1993, **Federal Register** notice, the Department inadvertently stated that consideration of the factors set forth in proposed § 11.83(a)(3) would ensure that trustee officials do not select

a restoration, rehabilitation, replacement, and/or acquisition alternative that poses grossly disproportionate costs. Section 11.83(a)(3) of the rule addresses selection of cost estimating and valuation methodologies rather than selection of a restoration, rehabilitation, replacement, and/or acquisition alternative. The Department meant to reference the factors set forth in § 11.82(d).

Comment: Some commenters agreed with the Department's proposal to allow trustee officials to base damages solely on restoration, rehabilitation, replacement, and/or acquisition costs when there is no acceptable methodology for calculating compensable value at a reasonable cost. One commenter, however, urged the Department to clarify that when trustee officials choose to base damages solely on restoration, rehabilitation, replacement, and/or acquisition costs, PRPs should not be allowed to challenge these costs based on their unilateral calculation of compensable values.

Response: The Department has decided that a trustee official should have the discretion to base damages solely on the cost of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources not only when compensable value cannot be calculated at a reasonable cost but whenever the trustee official deems it appropriate. The Department has revised the language of § 11.80(b) accordingly. The rule provides that it is within the trustee official's discretion whether to base damages solely on restoration, rehabilitation, replacement, and/or acquisition costs; therefore, PRPs will not be able to use a unilateral calculation of compensable value to challenge a damage claim based solely on restoration, rehabilitation, replacement, and/or acquisition costs.

I. Restoration, Rehabilitation, Replacement, and/or Acquisition of Equivalent Services Versus Resources

Comment: Despite the Department's attempts to clarify the issue in the July 22, 1993, **Federal Register** notice, commenters expressed continued confusion over whether the Department intended restoration, rehabilitation, replacement, and/or acquisition of the equivalent to focus on the resource itself, the services provided by a resource, or both. Several commenters continued to think that the rule dealt inconsistently with this issue.

Some commenters thought that the Department should specify that damages are based on the cost of restoring, rehabilitating, replacing, and/or acquiring the equivalent of both the services provided by a resource and the resource itself. These commenters objected to the Department's statements that service levels provide a means of measuring restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. These commenters expressed concern that using services alone as a measurement would result in less than complete restoration, rehabilitation, replacement, and/or acquisition of equivalent resources because the loss of potential services might be left unaddressed.

A few commenters offered an example of a groundwater drinking supply that previously contained hazardous substances at concentrations significantly better than required by drinking water standards. The commenters noted that if service levels are used to measure restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, then treating the groundwater to the point at which it meets drinking water standards might be deemed full restoration, rehabilitation, replacement, and/or acquisition but would fail to make the public whole. These commenters further stated that failure to account for potential services when measuring restoration, rehabilitation, replacement, and/or acquisition of equivalent resources would violate *Ohio* v. *Interior*, which stated that "a trustee is not prohibited from recovering costs of restoring or replacing a natural resource even when that resource has no documented 'committed use.'" 880 F.2d at 462.

Other commenters stated that service levels should not be viewed simply as a yardstick for, but rather as the very focus of, restoration, rehabilitation, replacement, and/or acquisition. These commenters thought that unless reestablishment of baseline service levels were used as the standard for restoration, rehabilitation, replacement, and/or acquisition, PRPs would be required to pay to replicate the exact natural resources that were injured, contrary to congressional intent. These commenters requested that the Department state explicitly that the actual injury need not be corrected if services can be restored through other means. Some commenters offered an example of contaminated sediment that destroys vegetation. These commenters stated that dredging should not be required if the vegetation can be restored through reseeding or fertilization.

A number of commenters also objected to the Department's statement that Congress did not intend to allow trustee officials to simply restore the abstract services provided by a resource through an artificial mechanism. Some commenters asked the Department to clarify that its concern lies with creation of an artificial resource rather than use of a manufactured device to restore the injured resource.

Response: As noted in the July 22, 1993, **Federal Register** notice, the Department did not intend to change the focus of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources in this rulemaking. The Department has always intended restoration, rehabilitation, replacement, and/or acquisition of equivalent resources to involve actions taken to return a resource to baseline. Apparent inconsistencies in the rule arise because trustee officials need a means of measuring injury in order to determine when restoration, rehabilitation, replacement, and/or acquisition of equivalent resources is complete, and the concept of services provides that means. As was stated in the August 1, 1986, preamble to the original type B rule:

> Traditionally humans have valued natural resources in monetary terms on the basis of services provided by the resources. This method logically may be extended to valuing damages to an injured resource on the basis of changes in services. This rule establishes the link between measured adverse changes in the condition of the resource, the injury, and the damages through the measurement of changes in the services provided by the injured resource. 51 FR 27686.

In other words, although it is the natural resource that trustee officials are restoring, rehabilitating, replacing, and/or acquiring the equivalent of, such actions cause an increase in services, and that increase in services is used to measure the level of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

As evidenced by the statutory provision allowing trustee officials to acquire equivalent natural resources, Congress did not envision that trustee officials would, could, or should always replicate the exact same injured resources. Therefore, the rule gives trustee officials the discretion to decide, based on consideration of designated factors, how best to provide the public with natural resources that offer the same baseline level of services. Further, trustee officials have the discretion to decide which services to consider when determining the necessary level of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

The Department does not believe that using baseline service levels to measure

restoration, rehabilitation, replacement, and/or acquisition of equivalent resources fails to make the public whole. In the groundwater example offered by the commenters, the resource may well provide a service other than that of being a drinking water supply. For example, in the August 1, 1986, preamble to the original type B rule, the Department noted that one service provided by resources with low baseline concentrations of hazardous substances or oil is the service of "being able to absorb low levels of that material without exceeding standards or without other effects." 51 FR 27716. Trustee officials have the discretion to consider this and other services when determining the necessary level of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

Also, the Department does not think that using baseline services to measure restoration, rehabilitation, replacement, and/or acquisition of equivalent resources violates the *Ohio* v. *Interior* holding concerning committed uses. The term "committed use," which applies only to calculation of compensable values, refers to human uses of resources. The definition of "services," which was not affected by this rulemaking, includes more than just functions provided by the injured resource for humans. When determining the necessary level of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, trustee officials have the discretion to consider services provided by the injured resource for another resource, regardless of whether there is a committed human use of those services.

Finally, the Department did not intend to suggest in the July 22, 1993, **Federal Register** notice that trustee officials may not use manufactured devices to assist the restoration of injured resources. The Department simply meant that trustee officials should not replace injured natural resources with artificial resources.

Comment: There were a number of comments about whether restoration, rehabilitation, replacement, and/or acquisition of equivalent resources should include reestablishing baseline services provided by the injured resource to other resources (e.g., provision of a food source for fish or wildlife). Some commenters supported consideration of inter-resource services in order to ensure complete restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. Other commenters thought that trustee officials generally should not consider inter-resource services. These commenters stated that requiring restoration, rehabilitation, replacement, and/or acquisition of equivalent inter-resource services would amount to requiring replication of the exact natural resource that was injured. These commenters expressed concern that there is currently no way of accurately quantifying inter-resource service levels. Some of these commenters suggested that inter-resource services be considered only when they have value to humans.

Response: Section 11.71(e), which was not affected by this rulemaking, allows trustee officials to consider inter-resource services when quantifying an injury. Since restoration, rehabilitation, replacement, and/or acquisition of equivalent resources is designed to correct an injury, trustee officials have the discretion to consider inter-resource services when determining the necessary level of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. As was noted in the August 1, 1986, preamble to the original type B rule:

> * * * The non-human services may be more important [than services used by humans] in measuring changes in how well a wildlife habitat or marsh is supporting wildlife, controlling floods, assimilating wastes, and providing any other services that may be important. 51 FR 27687.

Moreover, as discussed above, prohibiting trustee officials from considering inter-resource services could violate the *Ohio* v. *Interior* holding concerning committed use. J. Selection of a Restoration, Rehabilitation, Replacement, and/or Acquisition Alternative

Comment: There were numerous comments on the factors for consideration during selection of a restoration, rehabilitation, replacement, and/or acquisition alternative. Several commenters thought that the proposed rule would afford trustee officials the appropriate degree of discretion by providing factors for consideration but leaving the question of how to weigh those factors up to the trustee officials.

A number of other commenters thought that the proposed rule would provide trustee officials with too much discretion over selection of a restoration, rehabilitation, replacement, and/or acquisition alternative. These commenters supported the Department's proposal to require trustee officials to consider all of the listed factors. However, these commenters stated that simply requiring consideration of the factors was inadequate. These commenters stated that the Department should provide guidance on how trustee officials should consider and weigh the factors in order to prevent abuses of discretion. A few commenters objected to the Department's statement that development of a post-award Restoration Plan would curb potential abuses of discretion by a trustee official in selecting a pre-award restoration, rehabilitation, replacement, and/or acquisition alternative to serve as the basis of the trustee official's claim.

Response: Section 11.82(d) lists factors for trustee officials to consider when choosing a restoration, rehabilitation, replacement, and/or acquisition alternative. The language of the proposed rule has been revised to require trustee officials to consider all of the listed factors. However, in light of the wide range of possible natural resource damage cases, the Department believes that trustee officials must have flexibility when selecting a restoration, rehabilitation, replacement, and/or acquisition alternative. Therefore, the rule does not mandate how trustee officials should weigh the listed factors.

The rule provides a number of protections against potential abuses of discretion by trustee officials. Trustee officials are required to document their rationale for selecting a particular alternative. This documentation is included both in the Restoration and Compensation Determination Plan, which is subject to public review and comment, and in the Report of Assessment, which is reviewable in court. Finally, the rule provides that the Restoration Plan, which describes how the damages that are actually collected will be spent, is to be based on the alternatives selected in the Restoration and Compensation Determination Plan. Although the Restoration Plan is developed after damages have been recovered, the Restoration Plan is subject to public review and comment. Therefore, trustee officials who propose restoration, rehabilitation, replacement, and/or acquisition alternatives that differ from those used as a basis for damages will have to explain the reasons for the difference.

Comment: Some commenters thought that trustee officials should be required to choose restoration, rehabilitation, replacement, and/or acquisition alternatives that are technically feasible.

Response: The rule lists technical feasibility as one of the factors that trustee officials must consider when selecting a restoration, rehabilitation, replacement, and/or acquisition alternative. Under § 11.14(qq) of the rule, an alternative is "technically feasible" if it involves well-known technology and has a reasonable chance of successful completion in an acceptable period of time. Different

alternatives may possess varying degrees of feasibility. The technical feasibility factor is designed to require an evaluation of these varying degrees of technical feasibility rather than to establish a strict standard of feasibility for acceptable alternatives. Nevertheless, trustee officials should not select alternatives that are infeasible.

Comment: A number of commenters suggested that trustee officials should be required to choose the restoration, rehabilitation, replacement, and/or acquisition alternative that maximized net benefits or was most cost effective.

Response: Ohio v. *Interior* recognized that cost considerations, although relevant, are not paramount under CERCLA. Therefore, the rule does not require trustee officials to select the alternative that is most cost effective or that minimizes costs. However, the rule does require trustee officials to consider both cost effectiveness and the relationship between costs and benefits when selecting a restoration, rehabilitation, replacement, and/or acquisition alternative.

When considering the relationship between costs and benefits, trustee officials should consider how each restoration, rehabilitation, replacement, and/or acquisition alternative would affect not only the injured resources but also lost interim use of those resources. Total damages will depend on the sum of compensable value and restoration, rehabilitation, replacement, and/or acquisition costs. Often there will be tradeoffs between compensable value and restoration, rehabilitation, replacement, and/or acquisition costs. For example, a fast-paced restoration, rehabilitation, replacement, and/or acquisition alternative may result in a lower level of interim lost use, and thus reduce associated compensable values. However, implementation of such an alternative may result in significantly higher restoration, rehabilitation, replacement, and/or acquisition costs. In some cases, there may be sufficient data to demonstrate that some restoration, rehabilitation, replacement, and/or acquisition alternatives result in substantially lower total damages than others.

In its January 7, 1994 notice of proposed rulemaking, NOAA solicited comment on whether its damage assessment regulations under OPA should require trustee officials to explain their rationale if they select a restoration, rehabilitation, replacement, and/or acquisition alternative that does not minimize total damages. 59 FR 1134. If NOAA does include such a requirement in its final damage assessment regulations, the Department will consider whether a similar requirement should be added to the Department's type B rule during the upcoming biennial review.

Comment: A few commenters thought that the Department should require trustee officials to select a restoration, rehabilitation, replacement, and/or acquisition alternative that is consistent with the response actions taken at the site. These commenters expressed concern that without such a requirement, State trustee officials could circumvent section 121(f) of CERCLA, which requires States to bear the cost of obtaining cleanup levels beyond those selected by the United States Environmental Protection Agency (EPA).

Response: Section 11.23(f) of the rule, which was not affected by this rulemaking, requires trustee officials to coordinate their activities with the lead response agency. Also, § 11.82(d)(4) of this final rule requires trustee officials to consider the effects of any actual or planned response actions when selecting a restoration, rehabilitation, replacement, and/or acquisition alternative. The Department encourages trustee officials to work closely with EPA, the United States Coast Guard, and State response agencies. However, the Department recognizes that the purpose of a response action may differ from that of an action to restore, rehabilitate, replace, and/or acquire the equivalent of injured resources. Therefore, the Department does not believe that consistency with response actions should govern the selection of a restoration, rehabilitation, replacement, and/or acquisition alternative.

The Department does not believe that section 121(f) of CERCLA is applicable in this context. Section 121(f) addresses whether the cost of attaining a certain cleanup level should be borne by the Federal Hazardous Substance Superfund or by the State; it does not address PRP liability for natural resource damages.

Comment: Some commenters requested that trustee officials be required to provide a detailed analysis of the factors listed in § 11.82(d).

Response: The Department believes that a trustee official's analysis of the factors listed in § 11.82(d), like all statements required under the regulations, should be detailed enough to provide PRPs, other trustee officials, the general public, any other interested parties, and ultimately the courts with an adequate opportunity to evaluate the analysis. The level of detail may vary depending on the alternatives involved. The Department does not believe that any revision of the rule is necessary.

Comment: One commenter requested that proposed § 11.82(d)(10), which addressed consideration of consistency with applicable Federal and State laws and policies, be amended to include reference to tribal laws and policies.

Response: The Department agrees with the commenter and has revised the rule accordingly. As noted in the July 22, 1993, **Federal Register** notice, the Department has also decided that consideration of compliance with applicable Federal, State, and tribal laws should be distinguished from consideration of consistency with relevant Federal, State, and tribal policies. Therefore, the Department has revised the language of proposed § 11.82(d)(10) to list these two factors separately.

Comment: A few commenters suggested that the Department prohibit trustee officials from considering factors other than those listed. These commenters expressed concern that in the absence of such a prohibition, trustee officials might base their decisions on inappropriate considerations.

Response: The Department believes that in some situations there may be appropriate considerations in addition to the factors listed in § 11.82(d). Section 11.82(d) already provides that all factors considered must be relevant. The Department does not believe that any revision of the rule is necessary.

Comment: Some commenters stated that the rule should clearly authorize trustee officials to choose a natural recovery alternative when selecting a restoration, rehabilitation, replacement, and/or acquisition alternative. Some commenters thought that the Department should provide guidance on how trustee officials could maximize the opportunities for natural recovery.

Response: The Department believes that the rule does clearly authorize trustee officials to select a natural recovery alternative when appropriate. In fact, § 11.82(c)(2) explicitly requires trustee officials to consider a "No Action-Natural Recovery" alternative. Development of additional guidance is beyond the scope of this rulemaking.

Comment: Some commenters thought that the rule should not discriminate among the four components of restoration, rehabilitation, replacement, and acquisition of equivalent resources. Other commenters thought that the rule should not grant acquisition of land the same status as restoration, rehabilitation, or replacement. These commenters stated that CERCLA and *Ohio* v. *Interior* establish a clear

preference for using restoration or replacement costs, as opposed to acquisition costs, as the measure of damages. The commenters noted that section 107(f)(1) of CERCLA does list restoration, replacement, and acquisition of equivalent resources as legitimate uses of collected damages but then provides that the measure of damages shall not be limited by restoration and replacement costs. According to the commenters, these statutory provisions indicate, and the court in *Ohio* v. *Interior* recognized, that amounts recovered must be spent first on feasible restoration or replacement actions and then any excess funds are to be spent on acquisition of equivalent resources. These commenters also stated that land acquisition does nothing to improve the condition of the injured natural resources.

Response: In light of the wide range of possible cases, the Department believes that the rule should provide flexibility in the selection of a method to return an injured resource to baseline. The term "restoration, rehabilitation, replacement, and/or acquisition of equivalent resources" was introduced to emphasize that trustee officials may select among a wide range of methods. The Department does not believe that the rule should establish a preference for restoration as opposed to acquisition of equivalent resources. CERCLA explicitly mentions use of recovered funds for restoration, rehabilitation, replacement or acquisition of equivalent resources. The "shall not be limited by" language quoted by the commenters simply provides that trustee officials may obtain damages in excess of restoration costs. The statutory language does not require that damages be based on acquisition costs only if restoration is infeasible. Further, the court in *Ohio* v. *Interior* did not establish any preference for restoration as opposed to acquisition of equivalent resources. In fact, the court specifically stated that its use of the term "restoration" was intended as shorthand for restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured resources. 880 F.2d at 441.

Comment: Some commenters supported the Department's clarification that the restriction on land acquisition set forth in proposed § 11.82(d)(8) would apply only to Federal trustee officials, not State or tribal trustee officials. Other commenters thought that the restriction should be eliminated altogether.

Response: As was noted in the August 1, 1986, preamble to the original type B rule, the restriction on land acquisition by Federal trustee officials was included:

> * * * After extensive consultation with other Federal agencies. The purpose of this limitation is to limit the acquisition of private lands for Federal management under CERCLA, by eliminating the possibility of expanding the Federal estate without Congressional approval. 51 FR 27719.

To avoid any confusion, the Department has removed the restriction from the list of factors that all trustee officials must consider when selecting a restoration, rehabilitation, replacement, and/or acquisition alternative and designated it as a separate provision. Further revision is beyond the scope of this rulemaking.

Comment: Some commenters requested that trustee officials be prohibited from selecting a restoration, rehabilitation, replacement, and/or acquisition alternative that involves the purchase of contaminated land.

Response: The Department anticipates that there may be situations in which it is difficult to identify available land in the appropriate geographical region that provides services identical to those provided by the injured resources. Therefore, the Department believes it would be inappropriate to further restrict trustee officials by requiring them to acquire only land that is free from all contamination.

Comment: Some commenters thought that if trustee officials based their damage claim on acquisition costs, they should be required to demonstrate a clear link between the services lost and the services provided by the acquired resource.

Response: The rule provides that trustee officials are to select a restoration, rehabilitation, replacement, and/or acquisition alternative that reestablishes baseline services. Therefore, any alternative based on acquisition of resources would have to involve acquiring resources that provide services equivalent to those lost as a result of the injury.

Comment: One commenter expressed concern that proposed § 11.82(b)(1) could be read to require trustee officials to examine restoration, rehabilitation, replacement, and/or acquisition alternatives on a resource-by-resource basis.

Response: The Department did not intend to require trustee officials to examine restoration, rehabilitation, replacement, and/or acquisition alternatives on a resource-by-resource basis. To avoid any confusion, the Department has revised the language of the proposed rule to refer to "resources" rather than "resource."

K. Costs of Restoration, Rehabilitation, Replacement, and/or Acquisition of Equivalent Resources

Comment: A number of commenters objected to the inclusion of indirect costs as recoverable restoration, rehabilitation, replacement, and/or acquisition costs. These commenters stated that indirect costs are not recoverable in natural resource damage cases as a matter of law. The commenters acknowledged that courts have awarded indirect costs in response actions; however, the commenters stated that those courts relied on the broad language of section 107(a)(4)(A) of CERCLA, which authorizes recovery of "all costs of removal or remedial action."

Some commenters cited case law for the proposition that indirect costs are generally not recoverable. *United States* v. *Rohm and Haas Company*, 2 F.3d 1265 (3d Cir. 1993) (*U.S.* v. *Rohm and Haas*). A few commenters stated that recoverable indirect costs should be limited to those actually caused by the release and objected to the reference in proposed § 11.83(b)(1)(ii) to recovery of costs of activities that "support" the selected restoration, rehabilitation, replacement, and/or acquisition alternative. These commenters also stated that the Department should clarify that the cost of policy formulation is not recoverable.

Response: The Department believes that inclusion of indirect costs in an assessment is consistent with both *Ohio* v. *Interior* and the language and legislative history of CERCLA, which emphasize development of a damage figure that will make the public whole. 880 F.2d at 445. Section 107(f)(1) of CERCLA contains the broad language that "[t]he measure of damages shall not be limited by the sums which can be used to restore or replace" the injured resources.

The Department agrees that PRPs are only liable for those indirect costs that are connected to a specific release or discharge. However, the Department does not believe that revisions to the language of the proposed rule are necessary. Furthermore, although the Department does not think that the cost of policy formulation would generally be recoverable, there may be some cases in which certain policy formulation activities would not take place but for the occurrence of a specific release or discharge. In those cases, and only in those cases, the costs of policy formulation could be recoverable.

The Department does not believe that *U.S.* v. *Rohm and Haas* is relevant. The court in that case held that EPA

oversight of cleanup activities conducted by PRPs did not constitute a "removal" action under CERCLA, and therefore the cost of the oversight was not recoverable. The court did not address the recoverability of indirect costs associated with government action. In fact, the court specifically stated that "this case does not involve the issue of whether indirect, overhead costs associated with government removal or remedial activity at a particular facility are recoverable * * *." 2 F.3d at 1273. The indirect costs recoverable under this rule are not oversight costs but rather costs that trustee officials will incur as they undertake restoration, rehabilitation, replacement, and/or acquisition.

Comment: A few commenters sought clarification of the meaning of the following language in proposed § 11.83(b)(1)(iii):

> When an indirect cost rate is used * * * [s]uch amounts determined in lieu of indirect costs shall be treated as an offset to the total indirect costs of the selected alternative before allocation to the remaining activities. The base upon which such remaining costs are allocated should be adjusted accordingly.

Response: The Department acknowledges the confusion generated by these last two sentences of proposed § 11.83(b)(1)(iii) and has deleted them.

Comment: Some commenters objected to the language of proposed § 11.83(b)(3) limiting trustee officials to cost estimating methodologies based on accounting practices. These commenters stated that accounting practices are generally developed to deal with past events and that methodologies developed in other disciplines are better suited for estimating future expenses. The commenters suggested that trustee officials be allowed to use methodologies based on "standard and accepted professional practices" or simply "standard and accepted estimating practices," including engineering practices and public budgeting practices.

Response: The Department did not intend to limit trustee officials to using only accounting practices. The Department has revised the language of proposed § 11.83(b)(3) to allow for the use of any standard and accepted cost estimating practices provided that the trustee officials can document that those practices satisfy the criteria set forth in § 11.83(a)(3).

Comment: One commenter stated that the rule should explicitly recognize the authority of trustee officials to use combinations of different cost estimating methodologies.

Response: The Department agrees that trustee officials should be allowed to use combinations of different cost estimating methodologies, so long as the different methodologies either do not double count damages or allow any double counting to be estimated and eliminated in the final damage calculation. The Department has revised the language of proposed § 11.83(b)(2) to make this point clear.

Comment: A few commenters thought that the proposed rule provided inadequate guidance on selection and use of cost estimating methodologies.

Response: The Department believes that development of additional guidance is beyond the scope of this rulemaking.

L. Compensable Value

Comment: A few commenters thought that the proposed rule provided inadequate guidance on selection and use of valuation methodologies.

Response: The "Type B Technical Information Document: Techniques to Measure Damages to Natural Resources," which was developed in 1987, is available through the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, (703) 487–4650. The Department is considering updating the document; however, such revision is beyond the scope of this rulemaking.

Comment: Some commenters requested that proposed § 11.84(h)(3) be revised to allow State trustee officials to assess and recover compensable value for all individuals, not just those within the State.

Response: The "scope of analysis" provisions contained in § 11.84(h)(3) have not been substantively changed by this rulemaking. Virtually identical provisions were incorporated in § 11.84(i) during the August 1, 1986, rulemaking. This final rule merely substitutes the term "compensable value" for the term "use value." Further clarification is beyond the scope of this rulemaking.

Comment: A few commenters questioned what was meant by the term "secondary economic impacts," which would be excluded from the definition of "compensable value" under proposed § 11.83(c)(1).

Response: The Department believes that introducing the term "secondary economic impacts" into the regulations would create unnecessary confusion. Therefore, the Department has revised the proposed rule to eliminate the term. Nevertheless, the Department notes that all recoverable values must be traceable to a direct loss of services provided to the public.

M. Date of Promulgation of the Natural Resource Damage Assessment Regulations

Comment: There were numerous comments on proposed § 11.91(e) clarifying the date of promulgation of the natural resource damage assessment regulations for statute of limitations purposes. Several commenters supported proposed § 11.91(e). These commenters stated that clarification of the date of promulgation was necessary and within the Department's statutory authority and technical expertise. Other commenters thought that clarification of a term in the statute of limitations was a judicial matter beyond the Department's authority and expertise.

Response: The Department believes that it has full authority to issue § 11.91(e). Section 301(c) of CERCLA authorizes the Department to "promulgate regulations for the assessment of damages for injury to * * * natural resources." Section 113(g)(1) of CERCLA creates a statute of limitations based on the date that those regulations are "promulgated." Since *Ohio* v. *Interior* and *Colorado* v. *Interior* were issued, there has been considerable confusion over the statute of limitations. Nothing in the language or legislative history of CERCLA explicitly defines "promulgation." As the agency given authority to develop procedures for assessing natural resource damages, the Department believes it is in the best position to evaluate when regulations establishing full procedures have been promulgated. Issuance of § 11.91(e) is designed merely to clarify an unclear statutory term and is well within the scope of the Department's expertise and statutory grant of authority.

Comment: Some commenters stated that the proposed clarification was consistent with Congressional intent. These commenters noted legislative history indicating that section 113(g)(1) was added to CERCLA out of concern that the absence of final natural resource damage assessment regulations had impaired the ability of trustee officials to pursue claims. According to these commenters, trustee officials are just as handicapped after *Ohio* v. *Interior* and *Colorado* v. *Interior* as they were when section 113(g)(1) was passed because those cases invalidated a crucial aspect of the regulations, namely the measure of damages.

Other commenters stated that the proposed clarification could not be consistent with Congressional intent because it would allow the statute of limitations to be tolled indefinitely. These commenters disagreed with the

Department's statement in the July 22, 1993, **Federal Register** notice that *Ohio* v. *Interior* and *Colorado* v. *Interior* left trustee officials without a measure of damages. These commenters stated that *Ohio* v. *Interior* established restoration costs as the measure of damages.

Response: The Department believes that proposed § 11.91(e) is completely consistent with Congressional intent. *Ohio* v. *Interior* did not overturn the regulations in their entirety; however, it did remand an extremely critical component of the regulations, namely the measure of damages. Although *Ohio* v. *Interior* held that restoration costs are the preferred measure of damages, the court also acknowledged that the Department has considerable authority and discretion to shape the specific scope of the measure of damages. Thus, until the Department revises the regulations, no valid measure of damages exists.

Section 11.91(e) does not allow the statute of limitations to be tolled indefinitely, it merely ensures that trustee officials are not barred from bringing suit before they have the benefit of complete procedures for assessing natural resource damages. The legislative history of the Superfund Amendments and Reauthorization Act (SARA) indicates that section 113(g)(1) was added to CERCLA because Congress believed that so long as trustee officials lacked procedures for assessing natural resource damages they were handicapped in their ability to bring suit. In the absence of a valid damage formula, the very goal of the natural resource damage assessment regulations, namely the derivation of a monetary damage figure, cannot be fully realized.

Comment: Some commenters stated that the proposed clarification of the date of promulgation was incorrect as a matter of law and common sense. The commenters cited dictionaries and case law for the proposition that the date of promulgation is the date on which a signed rule is first made public or is published, not when it has cleared judicial hurdles. *United States* v. *City of Seattle*, No. C90–395WD, slip op. (W.D. Wash. Jan. 28, 1991) (*U.S.* v. *Seattle*); *American Petroleum Institute* v. *Costle*, 609 F.2d 20, 23–24 (D.C. Cir. 1979) (*API* v. *Costle*); *United Technologies Corp.* v. *Occupational Safety and Health Administration*, 836 F.2d 52, 54 (2d Cir. 1987) (*UTC* v. *OSHA*).

Response: The Department believes that the cases cited by commenters for the proposition that "promulgation" occurs when a regulation is first made public are inapposite. *API* v. *Costle* involved the interpretation of a provision of the Clean Air Act that prohibited the inclusion of documents in a rulemaking docket after the date of promulgation. 609 F.2d at 22. Noting that the statutory provision was designed to ensure adequate opportunity for public review and to prevent post hoc rationalizations, the court held that the date of promulgation was the date the final rule was first released to the public as opposed to the date of publication in the **Federal Register**. Id. at 23–24.

UTC v. *OSHA* involved the statute of limitations period for filing a challenge to an OSHA standard. 836 F.2d at 53. The statute provided that any challenges to a standard issued by OSHA had to be brought within 60 days after the standard was promulgated. Id. OSHA regulations defined "the date of issuance" as the time of filing in the Office of the Federal Register but did not define "promulgation." Nevertheless, OSHA argued that the date of promulgation should also be the date of filing with the Office of the Federal Register. The court noted that Congress, by using two different terms, must have intended the date of issuance to differ from the date of promulgation. Id. Therefore, the court held that the date of promulgation was the date of publication in the **Federal Register**. Id. at 54.

Neither *API* v. *Costle* nor *UTC* v. *OSHA* purport to define "promulgation" for all purposes. In fact, the cases reveal that the definition of "promulgation" can vary, depending on Congressional intent. The cases also do not address the specific question of the effect of a judicial remand on the date of promulgation for statute of limitation purposes. Further, the court in *UTC* v. *OSHA* recognized an agency's authority to determine when its regulations had been promulgated, stating that "[t]he agency is certainly entitled to adopt a definition of 'promulgated', and it may well have the power to equate 'promulgated' with 'issued', if it chooses to." Id. at 53. The problem in that case was that the agency had not issued a regulation defining "promulgation."

U.S. v. *Seattle* involved a motion to dismiss a natural resource damage case on statute of limitations grounds. The defendant had argued that the statute of limitations began to run on August 1, 1986, the date the original type B rule was published. In an unpublished opinion, the court denied the motion to dismiss and held that the statute of limitations did not begin to run until both type A and type B rules had been promulgated. Slip op. at 1. Because the case had been filed within three years of March 20, 1987, the date the original type A rule was published, the court did not need to reach, and did not address, the issue of the effect of *Ohio* v. *Interior* and *Colorado* v. *Interior* on the date of promulgation.

However, in light of existing case law, the Department has decided that it would be more appropriate to base the date of promulgation on the date of publication of final rules complying with *Ohio* v. *Interior* and *Colorado* v. *Interior* rather than the date of effectiveness of those final rules. The Department has revised the rule accordingly.

Comment: A few commenters noted that section 113(a) of CERCLA provides that any challenge to regulations issued under the statute must be brought within 90 days of promulgation. These commenters stated that if the natural resource damage assessment regulations had not been promulgated, the court in *Ohio* v. *Interior* would not have had jurisdiction.

Response: The Department does not dispute that the court in *Ohio* v. *Interior* had jurisdiction under section 113(a) of CERCLA. However, the Department does not believe that determination of the date of promulgation for purposes of section 113(a) is necessarily dispositive of the issue of the date of promulgation for purposes of section 113(g)(1).

Comment: A few commenters expressed concern that the Department has a conflict of interest because issuance of the proposed clarification of the date of promulgation would preserve the Department's ability to pursue its own natural resource damage claims.

Response: The Department does not believe that it has allowed its duties as a Federal trustee agency to prejudice the development of the natural resource damage assessment regulations. The Department has striven to develop regulations that are fair to not only trustee officials and the general public but also PRPs. Moreover, the Department notes that it is not only a trustee agency but frequently a PRP in natural resource damage cases.

N. Judicial Review of an Assessment

Comment: There were a number of comments concerning judicial review of assessments performed in accordance with the rule. Some commenters supported the Department's statement in the July 22, 1993, **Federal Register** notice that the rebuttable presumption attaches only to those assessments that are performed in accordance with the entire rule.

Other commenters disagreed, stating that the different components of the rule are not inextricably intertwined and that

trustee officials need the flexibility to decide which aspects of the rule are appropriate for a particular assessment. These commenters stated that the language of section 107(f) of CERCLA, which grants a rebuttable presumption to assessments performed "in accordance" with the rule, allows trustee officials to obtain a rebuttable presumption for any portion of an assessment that is in accordance with the rule. These commenters thought that if trustee officials assessed one component of damages following the rule and another component without following the rule they should still be able to obtain a rebuttable presumption for the component that was assessed in accordance with the rule.

Response: The Department's statement that the rebuttable presumption attaches only to those assessments performed in accordance with the entire rule was not intended to suggest that trustee officials would lose the rebuttable presumption if they supplemented the damage claim assessed under the rule with additional claims assessed without following the rule. The rule provides both an overall administrative process for development and review of documentation as well as a range of alternative methodologies for the actual determination and quantification of injury and damages. In order to obtain a rebuttable presumption, a trustee official must follow the entire administrative process set forth in the rule. If the trustee official has followed the administrative process, the rebuttable presumption attaches to those components of the damage claim that were calculated through the use of the methodologies described in the rule. However, trustee officials are not required to use all of the listed methodologies in order to obtain a rebuttable presumption.

For example, if trustee officials decide not to use the rule to assess damages for injury to a particular resource, they need not follow those portions of the rule that describe the methodologies for determining injury to such a resource. In that case, the trustee officials could still obtain a rebuttable presumption for damages for injury to other resources that were calculated using methodologies described in the rule. Similarly, if trustee officials decide not to use the rule to assess damages for a particular element of lost use of an injured resource, they need not follow those portions of the rule that describe methodologies for calculating compensable value for such an element. In that case, the trustee officials could still obtain a rebuttable presumption for damages for other elements of lost use that were calculated using methodologies described in the rule.

Comment: One commenter disagreed with the Department's statement that CERCLA does not grant a rebuttable presumption to assessments performed by tribal trustee officials. This commenter stated that when SARA was passed, Congress intended to grant tribes the same authority as States in the area of natural resource trustee activities. The commenter further stated that under established case law concerning the Federal government's fiduciary responsibility to tribes, any ambiguity in the statute concerning tribes' right to the rebuttable presumption must be construed in favor of the tribes.

On the other hand, a few commenters agreed with the Department's statement that CERCLA does not grant a rebuttable presumption to tribal assessments. However, these commenters expressed concern that the Department's statement in the July 22, 1993, **Federal Register** notice that assessments performed jointly by Federal and tribal trustee officials or by State and tribal trustee officials would qualify for a rebuttable presumption. These commenters thought that such an interpretation would circumvent the language of the statute.

Response: Section 11.91(c) of the rule was revised in 1988 to reflect the SARA amendment to CERCLA granting a rebuttable presumption to natural resource damage assessments performed by State trustee officials. In the preamble to that rule, the Department stated that SARA did not extend the rebuttable presumption to assessments performed by tribal trustee officials. 53 FR 5167. The Department went on to state that "Federal trustees and Indian tribes can work closely together in assessments, and such assessments would qualify for a rebuttable presumption." Id. at 5168. Further clarification of this issue is beyond the scope of this rulemaking.

Comment: There were several comments about the applicability of the rebuttable presumption to assessment costs. Some commenters stated that CERCLA provides a rebuttable presumption only for the actual damage assessment performed in accordance with this rule not for the costs of performing the assessment. Other commenters thought that trustee officials who comply with this rule, including the standards for reasonable costs, should be granted a rebuttable presumption that their damage assessment costs are recoverable.

Response: Section 11.91(c), which was not affected by this rulemaking, provides that when trustee officials perform an assessment in accordance with this rulemaking, the assessment receives a rebuttable presumption. The Department believes that the determination of whether it is reasonable to incur a particular assessment cost is an integral component of a damage assessment. The rule contains specific provisions to guide trustee officials in determining whether to incur a particular assessment cost, including a definition of reasonable assessment costs that was specifically upheld in *Ohio* v. *Interior*. Therefore, the Department believes that trustee officials that comply with this rule, including the standards for determining reasonable assessment costs, should be granted a rebuttable presumption that their assessment costs are reasonable and, thus, recoverable.

Comment: Some commenters thought that the Department should clarify that judicial review of an assessment is limited to the data in the administrative record. These commenters stated that, in the absence of such a clarification, PRPs would refuse to disclose any of their data until formal judicial discovery begins but would demand that trustee officials make all of their data available for public review and comment as early in the assessment process as possible. These commenters expressed concern that such a result would put trustee officials at a significant disadvantage in natural resource damage litigation.

Response: Clarification of the data that will be admitted in a natural resource damage case is beyond the scope of this rulemaking.

O. Use of Collected Damages

Comment: Some commenters stated that trustee officials should be required to spend all collected damages on implementation of the same restoration, rehabilitation, replacement, and/or acquisition alternative that was selected in the Restoration and Compensation Determination Plan as the basis for the damage claim. These commenters thought that without such a requirement, trustee officials would have little incentive to perform accurate assessments. There were suggestions that trustee officials be required to notify or obtain permission from the court or the PRPs before implementing a final Restoration Plan that differs significantly from the Restoration and Compensation Determination Plan.

Response: The Department does not believe that the rule should explicitly require collected damages to be spent on implementation of the same restoration, rehabilitation, replacement, and/or acquisition alternative selected in the

Restoration and Compensation Determination Plan. Section 11.93(a) provides that upon award of natural resource damages, trustee officials must prepare a Restoration Plan describing how the awarded funds will be used. Section 11.93(a) states that the Restoration Plan shall be based on the Restoration and Compensation Determination Plan. The Restoration Plan is intended to be a detailed description of the implementation of the alternative selected in the Restoration and Compensation Determination Plan. However, the Department recognizes that there may be unforeseen changes in the condition of the natural resources between the time the Restoration and Compensation Determination Plan is prepared and the time trustee officials actually collect damages. Also, the amount of damages ultimately collected may differ from the amount of damages claimed. Finally, the actual cost of restoring, rehabilitating, replacing, and/or acquiring the equivalent of the injured resources may differ from the estimated cost. Therefore, trustee officials may need to revise the alternative selected in the Restoration and Compensation Determination Plan.

The Department does not believe that absence of a requirement that trustee officials implement the same exact alternative selected in the Restoration and Compensation Determination Plan will eliminate trustee officials' incentive to conduct accurate assessments. The Restoration Plan is subject to public review and comment, and trustee officials who propose restoration, rehabilitation, replacement, and/or acquisition alternatives that differ from those used as a basis for damages will have to explain the reasons for the difference. The Department believes that making the draft Restoration Plan available for public review and comment should provide interested parties with adequate notice of proposed changes from the Restoration and Compensation Determination Plan.

Comment: A few commenters requested guidance on determining when restoration, rehabilitation, replacement, and/or acquisition of equivalent resources is complete. Some commenters suggested that trustee officials provide PRPs with a certification when restoration, rehabilitation, replacement, and/or acquisition of equivalent resources is essentially completed so that PRPs will not remain liable indefinitely.

Response: Section 11.73(a) provides that the recovery period is the time until baseline services have been reestablished. The Department does not believe it is necessary to require trustee officials to provide PRPs with a certification when restoration, rehabilitation, replacement, and/or acquisition of equivalent resources is essentially completed. The extent of a PRP's continuing liability after damages have been collected depends on the terms of the judgment or settlement agreement. Additional clarification is beyond the scope of this rulemaking.

Comment: Some commenters stated that any portion of collected damages that is not spent to restore, rehabilitate, replace, and/or acquire the equivalent of the injured resources or to supply lost uses should be returned to the PRPs. These commenters disagreed with the Department's statement in the July 22, 1993, **Federal Register** notice that such a requirement was unnecessary because there should never be excess funds after completion of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. These commenters noted that because damages are based on estimated costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and estimated compensable values, there will be excess funds whenever trustee officials overestimate costs or compensable values.

Response: The Department believes that revision of the regulations to address the disposition of any excess damage recoveries is beyond the scope of this rulemaking.

Comment: One commenter asked the Department to recognize the right of co-trustees to spend collected damages on implementation of different Restoration Plans.

Response: Nothing in the rule prohibits co-trustees from implementing different Restoration Plans. Additional clarification of this issue is beyond the scope of this rulemaking.

P. Miscellaneous Comments

1. Funding of Tribal Assessments

Comment: One commenter asked the Department to acknowledge that its fiduciary responsibility to tribes extends to natural resource damage assessments involving tribal resources. This commenter requested that the Department develop funding mechanisms for natural resource damage assessments involving tribal resources.

Response: Discussion of this issue is beyond the scope of this rulemaking.

2. Quality Assurance Plans

Comment: Several commenters stated that the rule should be revised to eliminate the requirement that trustee officials adopt quality assurance plans that conform with EPA guidance. These commenters thought that EPA guidance on quality assurance is poorly suited for natural resource damage assessment work. One commenter noted that the Department had incorrectly stated that proposed § 11.31(c)(4) contained a reference to EPA quality assurance guidance when in fact that reference is contained in § 11.31(c)(3) of the existing rule.

Response: In the July 22, 1993, **Federal Register** notice, the Department inadvertently suggested that proposed § 11.31(c)(4) would require trustee officials to include in their Assessment Plans quality assurance plans that complied with EPA guidance. Section 11.31(c)(4) contains no reference to quality assurance plans. Section 11.31(c)(3), which was renumbered but not substantively affected by this rulemaking, does require that trustee officials develop a quality assurance plan that satisfies the requirements listed in EPA guidance, but only if that guidance is applicable. Further clarification is beyond the scope of this rulemaking.

3. Threat of a Release or Discharge

Comment: Some commenters disagreed with the Department's statement in the July 22, 1993, **Federal Register** notice that the regulations may not be used to assess damages caused by a threat of a release or discharge. These commenters noted that section 107(a) of CERCLA specifically establishes liability for damages from a release or a threat of a release. Further, these commenters noted that natural resource damages include compensation for loss of use of a natural resource. Therefore, these commenters thought that if a threat of a release results in the loss of use of a natural resource, then trustee officials should be able to assess and bring a claim for natural resource damages.

Response: Section 11.10, which was not affected by this rulemaking, provides that these regulations are only available for the assessment of damages resulting from a discharge of oil or a release of a hazardous substance. Although section 107(a) of CERCLA does refer to a release or a threat of a release, section 107(a)(4)(C) refers to damages for injury to, destruction of, or loss of natural resources "resulting from such a release." Also, section 301(c) of CERCLA authorizes the Department to develop regulations for assessment of "damages for injury to, destruction of, or loss of natural resources resulting from a release of oil or a hazardous substance." Therefore, the rule may only be used when there has been an

actual release or discharge, as opposed to a threat of a release or discharge, and actual injury to, destruction of, or loss of a natural resource, as opposed to simply a reduction in use of a resource. Further clarification is beyond the scope of this rulemaking.

4. Coordination With Response Activities

Comment: Some commenters thought that the rule should provide additional guidance on coordination of natural resource damage assessment activities with response activities. A few commenters stated that trustee officials should be required to participate in the remedial planning process. One commenter supported coordination of natural resource damage assessment activities and response activities but urged trustee officials to bear in mind the paramount need for rapid and effective cleanup. One commenter suggested that the On-Scene Coordinator be allowed to contact just one Federal trustee agency and one State trustee agency and that the contacted trustee agencies be required to notify all other trustee agencies.

Response: The August 1, 1986, preamble to the original type B rule contains considerable discussion of the relationship between response actions and natural resource damage assessments. 51 FR 27681, 27692–93. Further clarification of the issue is beyond the scope of this rulemaking.

5. Injuries Caused by Response Activities

Comment: One commenter asked the Department to clarify that State trustee officials are not allowed to recover damages for injuries caused or aggravated by State-ordered cleanup activities if those injuries were reasonably avoidable. Another commenter interpreted the rule to prohibit recovery of damages for any injuries that trustee officials could have reasonably avoided.

Response: Section 11.15(a)(1)(ii), which was not affected by this rulemaking, provides that PRPs are liable for any increase in injuries that is reasonably unavoidable as a result of response actions taken or anticipated. As was stated in the August 1, 1986, preamble to the original type B rule,

* * * The Department believes that any response actions undertaken by government agencies should strive to avoid additional injury to natural resources whenever possible. Damages from such "reasonably unavoidable" increases in injury resulting from response actions by governmental agencies are not excluded from damage actions, because they are indirectly due to the discharge or release and thus included under section 301(c) of CERCLA. 51 FR 27698.

Therefore, if government response activities cause an increase in injuries, trustee officials can only recover damages for the increase if it was reasonably unavoidable. Section 11.15(a)(1)(ii) deals solely with liability for increases in injuries caused by response actions. Section 11.14(jj), which was not affected by this rulemaking, defines "response" as removal or remedial actions as defined in sections 101(23) and 101(24) of CERCLA.

6. Limitations on Liability

Comment: A few commenters believed that the rule should clarify the application of various statutory limitations on liability, including the ceilings set forth in section 107(c) of CERCLA and the provision in section 107(f)(1) that excludes natural resource damages if those damages and the release that caused those damages occurred wholly before the enactment of CERCLA.

Response: The Department notes that §§ 11.15(b) and 11.24(b)(1), which were not affected by this rulemaking, already incorporate the ceilings on damages set forth in section 107(c) of CERCLA and the limitation on damages set forth in section 107(f)(1) of CERCLA. Any further clarification of these provisions is beyond the scope of this rulemaking.

7. Timing of the Restoration and Compensation Determination Plan

Comment: Some commenters thought that the information needed to determine the required level of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources would not be available at the time that the Assessment Plan is made available for public comment and review; therefore, the Restoration and Compensation Determination Plan should not be prepared until after Injury Determination and Quantification have been completed. Other commenters expressed concern that allowing preparation of the Restoration and Compensation Determination Plan to be delayed would lead trustee officials to perform unnecessary and unfocused assessment work during Injury Determination and Quantification. Therefore, the commenters suggested that trustee officials be required to use their best efforts to prepare the Restoration and Compensation Determination Plan at the same time as the rest of the Assessment Plan.

Response: The Department believes that early preparation of the Restoration and Compensation Determination Plan is advisable to ensure that the costs of assessments are reasonable. The definition of "reasonable cost," which was not affected by this rulemaking, includes a requirement that Injury Determination, Quantification, and Damage Determination bear a well defined relationship to each other. The Assessment Plan, which includes the Restoration and Compensation Determination Plan, is designed to coordinate Injury Determination, Quantification, and Damage Determination. Therefore, the Restoration and Compensation Determination Plan should be prepared as early as possible. In most cases, trustee officials should be able to develop an initial Restoration and Compensation Determination Plan based on estimates of the extent and nature of the injuries and then make revisions as needed. Section 11.32(e)(1) of the rule, which was not affected by this rulemaking, authorizes trustee officials to modify any part of the Assessment Plan at any stage of the assessment as new information becomes available.

However, the Department recognizes that selection of a restoration, rehabilitation, replacement, and/or acquisition alternative depends in part upon the extent and nature of the injuries, which will not be fully known at the outset of an assessment. Therefore, there may be cases where even a preliminary attempt to evaluate restoration, rehabilitation, replacement, and/or acquisition alternatives would be meaningless unless Injury Determination or Quantification had begun. In these cases, premature preparation of the Restoration and Compensation Determination Plan could temporarily misdirect Injury Determination and Quantification. Therefore, the rule provides that in those cases where existing data are insufficient to develop a Restoration and Compensation Determination Plan at the time that the rest of the Assessment Plan is prepared, the Restoration and Compensation Determination Plan may be developed later. Nevertheless, the Restoration and Compensation Determination Plan must always be developed before completion of Quantification in order to ensure that Quantification is correlated with Damage Determination.

The Department believes that it is unnecessary to add a requirement that trustee officials use their "best efforts" to prepare the Restoration and Compensation Determination Plan along with the rest of the Assessment Plan. Nevertheless, the Department

emphasizes that trustee officials should only delay development of the Restoration and Compensation Determination Plan when existing data are insufficient to develop even a rough estimate of the extent of the injuries. Further, if trustee officials do delay development of the Restoration and Compensation Determination Plan, they should complete the Plan as soon as they obtain sufficient information.

National Environmental Policy Act, Regulatory Flexibility Act, Paperwork Reduction Act, and Executive Orders 12866, 12630, 12778, and 12612

The Department has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, no further analysis pursuant to section 102(2)(C) of the National Environmental Policy Act (43 U.S.C. 4332(2)(C)) has been prepared.

The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule provides technical procedural guidance for the assessment of damages to natural resources. It does not directly impose any additional cost. As the rule applies to natural resource trustees, it is not expected to have an effect on a substantial number of small entities.

It has been determined that this rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

This final rule has been reviewed under Executive Order 12866 and has been determined to constitute a significant regulatory action. However, because of the difficulty of evaluating the effects of alternatives to this rule, the Office of Information and Regulatory Affairs within the Office of Management and Budget has waived preparation of the assessments described in sections 6(a)(3)(B) and 6(a)(3)(C) of Executive Order 12866 for the final rule.

It has been determined that this rule does not have takings implications under Executive Order 12630. The Department has certified to the Office of Management and Budget that this rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778. It has been determined that this rule does not have federalism implications under Executive Order 12612.

List of Subjects in 43 CFR Part 11

Continental shelf, Environmental protection, Fish, Forests and forest products, Grazing land, Indian lands, Hazardous substances, Mineral resources, National forests, National parks, Natural resources, Oil pollution, Public lands, Wildlife, Wildlife refuges.

For the reasons set out in the preamble, title 43, subtitle A of the Code of Federal Regulations is amended as follows:

PART 11—NATURAL RESOURCE DAMAGE ASSESSMENTS

1. The authority citation for part 11 continues to read as follows:

Authority: 42 U.S.C. 9651(c), as amended.

Subpart A—Introduction

2. Section 11.13 is amended by revising paragraph (e)(3) to read as follows:

§ 11.13 Overview.

* * * * *

(e) * * *

(3) *Damage Determination phase.* The purpose of this phase is to establish the appropriate compensation expressed as a dollar amount for the injuries established in the Injury Determination phase and measured in the Quantification phase. The sections of subpart E of this part comprising the Damage Determination phase include guidance on acceptable cost estimating and valuation methodologies for determining compensation based on the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, plus, at the discretion of the authorized official, compensable value, as defined in § 11.83(c) of this part.

* * * * *

3. Section 11.14 is amended by revising paragraph (qq) to read as follows:

§ 11.14 Definitions.

* * * * *

(qq) *Technical feasibility* or *technically feasible* means that the technology and management skills necessary to implement an Assessment Plan or Restoration and Compensation Determination Plan are well known and that each element of the plan has a reasonable chance of successful completion in an acceptable period of time.

* * * * *

4. Section 11.15 is amended by revising paragraph (a)(3)(ii) to read as follows:

§ 11.15 Actions against the responsible party for damages.

(a) * * *

(3) * * *

(ii) Administrative costs and expenses necessary for, and incidental to, the assessment, assessment planning, and restoration, rehabilitation, replacement, and/or acquisition of equivalent resources planning, and any restoration, rehabilitation, replacement, and/or acquisition of equivalent resources undertaken; and

* * * * *

Subpart C—Assessment Plan Phase

5. Section 11.30 is amended by revising paragraph (c)(1)(v) to read as follows:

§ 11.30 Assessment Plan—general.

* * * * *

(c) * * *

(1) * * *

(v) Preliminary estimate of damages costs; and

* * * * *

6. Section 11.31 is amended by revising paragraph (a)(2), removing paragraph (c)(2), removing the word "and" at the end of paragraph (c)(3), replacing the period at the end of paragraph (c)(4) with the words "; and", redesignating paragraphs (c)(3) and (c)(4) as paragraphs (c)(2) and (c)(3) respectively, and adding a new paragraph (c)(4) to read as follows:

§ 11.31 Assessment Plan—content.

(a) * * *

(2) The Assessment Plan shall be of sufficient detail to serve as a means of evaluating whether the approach used for assessing the damage is likely to be cost-effective and meets the definition of reasonable cost, as those terms are used in this part. The Assessment Plan shall include descriptions of the natural resources and the geographical areas involved. The Assessment Plan shall also include a statement of the authority for asserting trusteeship, or co-trusteeship, for those natural resources considered within the Assessment Plan. The authorized official's statement of the authority for asserting trusteeship shall not have the force and effect of a rebuttable presumption under § 11.91(c) of this part. In addition, for type B assessments, the Assessment Plan shall include the sampling locations within those geographical areas, sample and survey design, numbers and types of samples to be collected, analyses to be performed, preliminary determination of the recovery period, and other such information required to perform the selected methodologies.

* * * * *

(c) * * *

(4) The Restoration and Compensation Determination Plan developed in

accordance with the guidance in § 11.81 of this part. If existing data are not sufficient to develop the Restoration and Compensation Determination Plan as part of the Assessment Plan, the Restoration and Compensation Determination Plan may be developed later, at any time before the completion of the Injury Determination or Quantification phases. If the Restoration and Compensation Determination Plan is published separately, the public review and comment will be conducted pursuant to § 11.81(d) of this part.

7. Section 11.32 is amended by revising paragraphs (a)(2)(iii)(A) and (f)(2), and by removing paragraph (f)(3) to read as follows:

§ 11.32 Assessment Plan—development.

(a) *Pre-development requirements.*

* * *

(2) * * *

(iii)(A) The authorized official shall send a Notice of Intent to Perform an Assessment to all identified potentially responsible parties. The Notice shall invite the participation of the potentially responsible party, or, if several parties are involved and if agreed to by the lead authorized official, a representative or representatives designated by the parties, in the development of the type and scope of the assessment and in the performance of the assessment. The Notice shall briefly describe, to the extent known, the site, vessel, or facility involved, the discharge of oil or release of hazardous substance of concern to the authorized official, and the resources potentially at risk. The Notice shall also contain a statement of authority for asserting trusteeship, or co-trusteeship, over those natural resources identified as potentially at risk.

* * * * *

(f) *Plan review.* * * *

(2) The purpose of this review is to ensure that the selection of methodologies for the Quantification and Damage Determination phases is consistent with the results of the Injury Determination phase, and that the use of such methodologies remains consistent with the requirements of reasonable cost, as that term is used in this part.

8. Section 11.35 is revised to read as follows:

§ 11.35 Assessment Plan—preliminary estimate of damages.

(a) *Requirement.* When performing a type B assessment pursuant to the requirements of subpart E of this part, the authorized official shall develop a preliminary estimate of: the anticipated costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources for the injured natural resources; and the compensable value, as defined in § 11.83(c) of this part, of the injured natural resources, if the authorized official intends to include compensable value in the damage claim. This preliminary estimate is referred to as the preliminary estimate of damages. The authorized official shall use the guidance provided in this section, to the extent possible, to develop the preliminary estimate of damages.

(b) *Purpose.* The purpose of the preliminary estimate of damages is for reference in the scoping of the Assessment Plan to ensure that the choice of the scientific, cost estimating, and valuation methodologies expected to be used in the damage assessment fulfills the requirements of reasonable cost, as that term is used in this part. The authorized official will also use the preliminary estimate of damages in the review of the Assessment Plan, as required in § 11.32(f) of this part, to ensure the requirements of reasonable cost are still met.

(c) *Steps.* The preliminary estimate of damages should include consideration of the ability of the resources to recover naturally and, if relevant, the compensable value through the recovery period with and without possible alternative actions. The authorized official shall consider the following factors, to the extent possible, in making the preliminary estimate of damages:

(1) The preliminary estimate of costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources should include consideration of a range of possible alternative actions that would accomplish the restoration, rehabilitation, replacement, and/or acquisition of the equivalent of the injured natural resources.

(i) The preliminary estimate of costs should take into account the effects, or anticipated effects, of any response actions.

(ii) The preliminary estimate of costs should represent the expected present value of anticipated costs, expressed in constant dollars, and should include direct and indirect costs, and include the timing of those costs. The provisions detailed in §§ 11.80–11.84 of this part are the basis for the development of the estimate.

(iii) The discount rate to be used in developing the preliminary estimate of costs shall be that determined in accordance with the guidance in § 11.84(e) of this part.

(2) The preliminary estimate of compensable value should be consistent with the range of possible alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources being considered.

(i) The preliminary estimate of compensable value should represent the expected present value of the anticipated compensable value, expressed in constant dollars, accrued through the period for the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources to baseline conditions, i.e., between the occurrence of the discharge or release and the completion of the restoration, rehabilitation, replacement, and/or acquisition of the equivalent of the injured resources and their services. The estimate should use the same base year as the preliminary estimate of costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. The provisions detailed in §§ 11.80–11.84 of this part are the basis for the development of this estimate.

(ii) The preliminary estimate of compensable value should take into account the effects, or anticipated effects, of any response actions.

(iii) The discount rate to be used in developing the preliminary estimate of compensable value shall be that determined in accordance with the guidance in § 11.84(e) of this part.

(d) *Content and timing.* (1) In making the preliminary estimate of damages, the authorized official should rely upon existing data and studies. The authorized official should not undertake significant new data collection or perform significant modeling efforts at this stage of the assessment planning phase.

(2) Where possible, the authorized official should make the preliminary estimate of damages before the completion of the Assessment Plan as provided for in § 11.31 of this part. If there is not sufficient existing data to make the preliminary estimate of damages at the same time as the assessment planning phase, this analysis may be completed later, at the end of the Injury Determination phase of the assessment, at the time of the Assessment Plan review.

(3) The authorized official is not required to disclose the preliminary estimate before the conclusion of the assessment. At the conclusion of the assessment, the preliminary estimate of damages, along with its assumptions and methodology, shall be included in the Report of the Assessment as provided for in § 11.91 of this part.

(e) *Review.* The authorized official shall review, and revise as appropriate, the preliminary estimate of damages at the end of the Injury Determination and Quantification phases. If there is any

significant modification of the preliminary estimate of damages, the authorized official shall document it in the Report of the Assessment.

Subpart E—Type B Assessments

9. Section 11.60 is amended by revising paragraphs (d)(1) (iii) and (iv) to read as follows:

§ 11.60 Type B assessments—general.

* * * * *

(d) *Type B assessment costs.* (1) * * *

(iii) Restoration and Compensation Determination Plan development costs including:

(A) Development of alternatives;

(B) Evaluation of alternatives;

(C) Potentially responsible party, agency, and public reviews;

(D) Other such costs for activities authorized by § 11.81 of this part;

(iv) Cost estimating and valuation methodology calculation costs; and

* * * * *

10. Section 11.71 is amended by revising paragraphs (a)(2) and (l)(4)(ii) to read as follows:

§ 11.71 Quantification phase—service reduction quantification.

(a) * * *

(2) This determination of the reduction in services will be used in the Damage Determination phase of the assessment.

* * * * *

(l) *Biological resources.* * * *

(4) * * *

(ii) Provide data that will be useful in planning efforts for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, and in later measuring the success of those efforts, and, where relevant, will allbw calculation of compensable value; and

* * * * *

11. Section 11.72 is amended by revising paragraph (b)(4) to read as follows:

§ 11.72 Quantification phase—baseline services determination.

* * * * *

(b) * * *

(4) Baseline data collection shall be restricted to those data necessary for conducting the assessment at a reasonable cost. In particular, data collected should focus on parameters that are directly related to the injuries quantified in § 11.71 of this part and to data appropriate and necessary for the Damage Determination phase.

* * * * *

12. Section 11.73 is amended by revising paragraph (a) to read as follows:

§ 11.73 Quantification phase—resource recoverability analysis.

(a) *Requirement.* The time needed for the injured resources to recover to the state that the authorized official determines services are restored, rehabilitated, replaced, and/or the equivalent have been acquired to baseline levels shall be estimated. The time estimated for recovery or any lesser period of time as determined in the Assessment Plan shall be used as the recovery period for purposes of § 11.35 and the Damage Determination phase, §§ 11.80 through 11.84, of this part.

(1) In all cases, the amount of time needed for recovery if no restoration, rehabilitation, replacement, and/or acquisition of equivalent resources efforts are undertaken beyond response actions performed or anticipated shall be estimated. This time period shall be used as the "No Action-Natural Recovery" period for purposes of § 11.82 and § 11.84(g)(2)(ii) of this part.

(2) The estimated time for recovery shall be included in possible alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, as developed in § 11.82 of this part, and the data and process by which these recovery times were estimated shall be documented.

* * * * *

13. Section 11.80 is revised to read as follows:

§ 11.80 Damage Determination phase—general.

(a) *Requirement.* (1) The authorized official shall make his damage determination by estimating the monetary damages resulting from the discharge of oil or release of a hazardous substance based upon the information provided in the Quantification phase and the guidance provided in this Damage Determination phase.

(2) The Damage Determination phase consists of § 11.80—general; § 11.81—Restoration and Compensation Determination Plan; § 11.82—alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources; § 11.83—cost estimating and valuation methodologies; and § 11.84—implementation guidance, of this part.

(b) *Purpose.* The purpose of the Damage Determination phase is to establish the amount of money to be sought in compensation for injuries to natural resources resulting from a discharge of oil or release of a hazardous substance. The measure of damages is the cost of restoration, rehabilitation, replacement, and/or acquisition of the equivalent of the injured natural resources and the services those resources provide. Damages may also include, at the discretion of the authorized official, the compensable value of all or a portion of the services lost to the public for the time period from the discharge or release until the attainment of the restoration, rehabilitation, replacement, and/or acquisition of equivalent of the resources and their services to baseline.

(c) *Steps in the Damage Determination phase.* The authorized official shall develop a Restoration and Compensation Determination Plan, described in § 11.81 of this part. To prepare this Restoration and Compensation Determination Plan, the authorized official shall develop a reasonable number of possible alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and select, pursuant to the guidance of § 11.82 of this part, the most appropriate of those alternatives; and identify the cost estimating and valuation methodologies, described in § 11.83 of this part, that will be used to calculate damages. The guidance provided in § 11.84 of this part shall be followed in implementing the cost estimating and valuation methodologies. After public review of the Restoration and Compensation Determination Plan, the authorized official shall implement the Restoration and Compensation Determination Plan.

(d) *Completion of the Damage Determination phase.* Upon completion of the Damage Determination phase, the type B assessment is completed. The results of the Damage Determination phase shall be documented in the Report of Assessment described in § 11.90 of this part.

14. Section 11.81 is revised to read as follows:

§ 11.81 Damage Determination phase—Restoration and Compensation Determination Plan.

(a) *Requirement.* (1) The authorized official shall develop a Restoration and Compensation Determination Plan that will list a reasonable number of possible alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and the related services lost to the public associated with each; select one of the alternatives and the actions required to implement that alternative; give the rationale for selecting that alternative; and identify the methodologies that will be used to determine the costs of the selected alternative and, at the discretion of the authorized official, the compensable value of the services lost

to the public associated with the selected alternative.

(2) The Restoration and Compensation Determination Plan shall be of sufficient detail to evaluate the possible alternatives for the purpose of selecting the appropriate alternative to use in determining the cost of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources for the injured natural resources and the services those resources provided, and, where relevant, the compensable value of the services lost to the public through the completion of the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and their services to the baseline.

(b) The authorized official shall use the guidance in §§ 11.82, 11.83, and 11.84 of this part to develop the Restoration and Compensation Determination Plan.

(c) The authorized official shall list the methodologies he expects to use to determine the costs of all actions considered within the selected alternative and, where relevant, the compensable value of the lost services through the recovery period associated with the selected alternative. The methodologies to use in determining costs and compensable value are described in § 11.83 of this part.

(d) (1) The Restoration and Compensation Determination Plan shall be part of the Assessment Plan developed in subpart B of this part. If existing data are not sufficient to develop the Restoration and Compensation Determination Plan at the time that the overall Assessment Plan is made available for public review and comment, the Restoration and Compensation Determination Plan may be developed later, after the completion of the Injury Determination or Quantification phases.

(2) If the Restoration and Compensation Determination Plan is prepared later than the Assessment Plan, it shall be made available separately for public review by any identified potentially responsible party, other natural resource trustees, other affected Federal or State agencies or Indian tribes, and any other interested members of the public for a period of no less than 30 calendar days. Reasonable extensions may be granted as appropriate.

(3) Comments received from any identified potentially responsible party, other natural resource trustees, other affected Federal or State agencies or Indian tribes, or any other interested members of the public, together with responses to those comments, shall be included as part of the Report of Assessment, described in § 11.90 of this part.

(4) Appropriate public review of the plan must be completed before the authorized official performs the methodologies listed in the Restoration and Compensation Determination Plan.

(e) The Restoration and Compensation Determination Plan may be expanded to incorporate requirements from procedures required under other portions of CERCLA or the CWA or from other Federal, State, or tribal laws applicable to restoration, rehabilitation, replacement, and/or acquisition of the equivalent of the injured resources or may be combined with other plans for related purposes, so long as the requirements of this section are fulfilled.

15. Section 11.82 is revised to read as follows:

§ 11.82 Damage Determination phase—alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

(a) *Requirement.* The authorized official shall develop a reasonable number of possible alternatives for the restoration, rehabilitation, replacement, and/or acquisition of the equivalent of the injured natural resources and the services those resources provide. For each possible alternative developed, the authorized official will identify an action, or set of actions, to be taken singly or in combination by the trustee agency to achieve the restoration, rehabilitation, replacement, and/or acquisition of equivalent natural resources and the services those resources provide to the baseline. The authorized official shall then select from among the possible alternatives the alternative that he determines to be the most appropriate based on the guidance provided in this section.

(b) *Steps.* (1) The authorized official shall develop a reasonable number of possible alternatives that would restore, rehabilitate, replace, and/or acquire the equivalent of the injured resources. Each of the possible alternatives may, at the discretion of the authorized official, consist of actions, singly or in combination, that would achieve those purposes.

(i) Restoration or rehabilitation actions are those actions undertaken to return injured resources to their baseline condition, as measured in terms of the physical, chemical, or biological properties that the injured resources would have exhibited or the services that would have been provided by those resources had the discharge of oil or release of the hazardous substance under investigation not occurred. Such actions would be in addition to response actions completed or anticipated pursuant to the National Contingency Plan (NCP).

(ii) Replacement or acquisition of the equivalent means the substitution for injured resources with resources that provide the same or substantially similar services, when such substitutions are in addition to any substitutions made or anticipated as part of response actions and when such substitutions exceed the level of response actions determined appropriate to the site pursuant to the NCP.

(iii) Possible alternatives are limited to those actions that restore, rehabilitate, replace, and/or acquire the equivalent of the injured resources and services to no more than their baseline, that is, the condition without a discharge or release as determined in § 11.72 of this part.

(2) *Services provided by the resources.* (i) In developing each of the possible alternatives, the authorized official shall list the proposed actions that would restore, rehabilitate, replace, and/or acquire the equivalent of the services provided by the injured natural resources that have been lost, and the period of time over which these services would continue to be lost.

(ii) The authorized official shall identify services previously provided by the resources in their baseline condition in accordance with § 11.72 of this part and compare those services with services now provided by the injured resources, that is, the with-a-discharge-or-release condition. All estimates of the with-a-discharge-or-release condition shall incorporate consideration of the ability of the resources to recover as determined in § 11.73 of this part.

(c) *Range of possible alternatives.* (1) The possible alternatives considered by the authorized official that return the injured resources and their lost services to baseline level could range from: Intensive action on the part of the authorized official to return the various resources and services provided by those resources to baseline conditions as quickly as possible; to natural recovery with minimal management actions. Possible alternatives within this range could reflect varying rates of recovery, combination of management actions, and needs for resource replacements or acquisitions.

(2) An alternative considering natural recovery with minimal management actions, based upon the "No Action-Natural Recovery" determination made in § 11.73(a)(1) of this part, shall be one of the possible alternatives considered.

(d) *Factors to consider when selecting the alternative to pursue.* When

selecting the alternative to pursue, the authorized official shall evaluate each of the possible alternatives based on all relevant considerations, including the following factors:

(1) Technical feasibility, as that term is used in this part.

(2) The relationship of the expected costs of the proposed actions to the expected benefits from the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

(3) Cost-effectiveness, as that term is used in this part.

(4) The results of any actual or planned response actions.

(5) Potential for additional injury resulting from the proposed actions, including long-term and indirect impacts, to the injured resources or other resources.

(6) The natural recovery period determined in § 11.73(a)(1) of this part.

(7) Ability of the resources to recover with or without alternative actions.

(8) Potential effects of the action on human health and safety.

(9) Consistency with relevant Federal, State, and tribal policies.

(10) Compliance with applicable Federal, State, and tribal laws.

(e) A Federal authorized official shall not select an alternative that requires acquisition of land for Federal management unless the Federal authorized official determines that restoration, rehabilitation, and/or other replacement of the injured resources is not possible.

16. Section 11.83 is amended by revising paragraph (a), removing paragraph (c), adding new paragraphs (c)(1) introductory text, (c)(1)(i), (c)(1)(ii), (c)(2) introductory text, (c)(2)(i) through (c)(2)(vi), and (c)(3), redesignating paragraph (b)(2) as paragraph (c)(1)(iii), revising paragraph (b), redesignating paragraphs (d)(5)(i) and (d)(5)(ii) as paragraphs (c)(2)(vii)(A) and (c)(2)(vii)(B) respectively, adding a new paragraph (c)(2)(vii) heading, adding a sentence to newly designated (c)(2)(vii)(A), and removing paragraph (d) to read as follows:

§ 11.83 Damage Determination phase—cost estimating and valuation methodologies.

(a) *General.* (1) This section contains guidance and methodologies for determining: The costs of the selected alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources; and the compensable value of the services lost to the public through the completion of the restoration, rehabilitation, replacement, and/or acquisition of the equivalent of the injured resources and their services to baseline.

(2)(i) The authorized official shall select among the cost estimating and valuation methodologies set forth in this section, or methodologies that meet the acceptance criterion of either paragraph (b)(3) or (c)(3) of this section.

(ii) The authorized official shall define the objectives to be achieved by the application of the methodologies.

(iii) The authorized official shall follow the guidance provided in this section for choosing among the methodologies that will be used in the Damage Determination phase.

(iv) The authorized official shall describe his selection of methodologies and objectives in the Restoration and Compensation Determination Plan.

(3) The authorized official shall determine that the following criteria have been met when choosing among the cost estimating and valuation methodologies. The authorized official shall document this determination in the Report of the Assessment. Only those methodologies shall be chosen:

(i) That are feasible and reliable for a particular incident and type of damage to be measured.

(ii) That can be performed at a reasonable cost, as that term is used in this part.

(iii) That avoid double counting or that allow any double counting to be estimated and eliminated in the final damage calculation.

(iv) That are cost-effective, as that term is used in this part.

(b) *Costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.* (1) Costs for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources are the amount of money determined by the authorized official as necessary to complete all actions identified in the selected alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, as selected in the Restoration and Compensation Determination Plan of § 11.81 of this part. Such costs shall include direct and indirect costs, consistent with the provisions of this section.

(i) Direct costs are those that are identified by the authorized official as attributed to the selected alternative. Direct costs are those charged directly to the conduct of the selected alternative including, but not limited to, the compensation of employees for the time and effort devoted to the completion of the selected alternative; cost of materials acquired, consumed, or expended specifically for the purpose of the action; equipment and other capital expenditures; and other items of expense identified by the authorized official that are expected to be incurred in the performance of the selected alternative.

(ii) Indirect costs are costs of activities or items that support the selected alternative, but that cannot practically be directly accounted for as costs of the selected alternative. The simplest example of indirect costs is traditional overhead, e.g., a portion of the lease costs of the buildings that contain the offices of trustee employees involved in work on the selected alternative may, under some circumstances, be considered as an indirect cost. In referring to costs that cannot practically be directly accounted for, this subpart means to include costs that are not readily assignable to the selected alternative without a level of effort disproportionate to the results achieved.

(iii) An indirect cost rate for overhead costs may, at the discretion of the authorized official, be applied instead of calculating indirect costs where the benefits derived from the estimation of indirect costs do not outweigh the costs of the indirect cost estimation. When an indirect cost rate is used, the authorized official shall document the assumptions from which that rate has been derived.

(2) *Cost estimating methodologies.* The authorized official may choose among the cost estimating methodologies listed in this section or may choose other methodologies that meet the acceptance criterion in paragraph (b)(3) of this section. Nothing in this section precludes the use of a combination of cost estimating methodologies so long as the authorized official does not double count or uses techniques that allow any double counting to be estimated and eliminated in the final damage calculation.

(i) *Comparison methodology.* This methodology may be used for unique or difficult design and estimating conditions. This methodology requires the construction of a simple design for which an estimate can be found and applied to the unique or difficult design.

(ii) *Unit methodology.* This methodology derives an estimate based on the cost per unit of a particular item. Many other names exist for describing the same basic approach, such as order of magnitude, lump sum, module estimating, flat rates, and involve various refinements. Data used by this methodology may be collected from technical literature or previous cost expenditures.

(iii) *Probability methodologies.* Under these methodologies, the cost estimate represents an "average" value. These methodologies require information

which is called certain, or deterministic, to derive the expected value of the cost estimate. Expected value estimates and range estimates represent two types of probability methodologies that may be used.

(iv) *Factor methodology.* This methodology derives a cost estimate by summing the product of several items or activities. Other terms such as ratio and percentage methodologies describe the same basic approach.

(v) *Standard time data methodology.* This methodology provides for a cost estimate for labor. Standard time data are a catalogue of standard tasks typically undertaken in performing a given type of work.

(vi) *Cost- and time-estimating relationships (CERs and TERs).* CERs and TERs are statistical regression models that mathematically describe the cost of an item or activity as a function of one or more independent variables. The regression models provide statistical relationships between cost or time and physical or performance characteristics of past designs.

(3) *Other cost estimating methodologies.* Other cost estimating methodologies that are based upon standard and accepted cost estimating practices and are cost-effective are acceptable methodologies to determine the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources under this part.

(c) *Compensable value.* (1) Compensable value is the amount of money required to compensate the public for the loss in services provided by the injured resources between the time of the discharge or release and the time the resources and the services those resources provided are fully returned to their baseline conditions. The compensable value includes the value of lost public use of the services provided by the injured resources, plus lost nonuse values such as existence and bequest values. Compensable value is measured by changes in consumer surplus, economic rent, and any fees or other payments collectable by a Federal or State agency or an Indian tribe for a private party's use of the natural resources; and any economic rent accruing to a private party because the Federal or State agency or Indian tribe does not charge a fee or price for the use of the resources.

(i) Use value is the value of the resources to the public attributable to the direct use of the services provided by the natural resources.

(ii) Nonuse value is the difference between compensable value and use value, as those terms are used in this section.

* * * * *

(2) *Valuation methodologies.* The authorized official may choose among the valuation methodologies listed in this section to estimate willingness to pay (WTP) or may choose other methodologies provided that the methodology can satisfy the acceptance criterion in paragraph (c)(3) of this section. Nothing in this section precludes the use of a combination of valuation methodologies so long as the authorized official does not double count or uses techniques that allow any double counting to be estimated and eliminated in the final damage calculation.

(i) *Market price methodology.* This methodology may be used if the natural resources are traded in the market. In using this methodology, the authorized official should make a determination as to whether the market for the resources is reasonably competitive. If the authorized official determines that the market for the resources, or the services provided by the resources, is reasonably competitive, the diminution in the market price of the injured resources, or the lost services, may be used to determine the compensable value of the injured resources.

(ii) *Appraisal methodology.* Where sufficient information exists, the appraisal methodology may be used. In using this methodology, compensable value should be measured, to the extent possible, in accordance with the applicable sections of the "Uniform Appraisal Standards for Federal Land Acquisition" (Uniform Appraisal Standards), Interagency Land Acquisition Conference, Washington, DC, 1973 (incorporated by reference, see § 11.18). The measure of compensable value under this appraisal methodology will be the difference between the with- and without-injury appraisal value determined by the comparable sales approach as described in the Uniform Appraisal Standards.

(iii) *Factor income methodology.* If the injured resources are inputs to a production process, which has as an output a product with a well-defined market price, the factor income methodology may be used. This methodology may be used to determine the economic rent associated with the use of resources in the production process. This methodology is sometimes referred to as the "reverse value added" methodology. The factor income methodology may be used to measure the in-place value of the resources.

(iv) *Travel cost methodology.* The travel cost methodology may be used to determine a value for the use of a specific area. An individual's incremental travel costs to an area are used as a proxy for the price of the services of that area. Compensable value of the area to the traveler is the difference between the value of the area with and without a discharge or release. When regional travel cost models exist, they may be used if appropriate.

(v) *Hedonic pricing methodology.* The hedonic pricing methodology may be used to determine the value of nonmarketed resources by an analysis of private market choices. The demand for nonmarketed natural resources is thereby estimated indirectly by an analysis of commodities that are traded in a market.

(vi) *Unit value methodology.* Unit values are preassigned dollar values for various types of nonmarketed recreational or other experiences by the public. Where feasible, unit values in the region of the affected resources and unit values that closely resemble the recreational or other experience lost with the affected resources may be used.

(vii) *Contingent valuation methodology*—(A) * * * This methodology may be used to determine lost use values of injured natural resources.

* * * * *

(3) *Other valuation methodologies.* Other valuation methodologies that measure compensable value in accordance with the public's WTP, in a cost-effective manner, are acceptable methodologies to determine compensable value under this part.

17. Section 11.84 is amended by revising paragraphs (a), (b)(1), (d)(2), (f), and (g) heading, (g)(1), (g)(2) introductory text, (g)(2) (i), (ii), and (iii); removing paragraph (h); and redesignating (i) as new paragraph (h) and revising it to read as follows:

§ 11.84 Damage Determination phase—implementation guidance.

(a) *Requirement.* The authorized official should use the cost estimating and valuation methodologies in § 11.83 of this part following the appropriate guidance in this section.

(b) *Determining uses.* (1) Before estimating damages for compensable value under § 11.83 of this part, the authorized official should determine the uses made of the resource services identified in the Quantification phase.

* * * * *

(d) *Uncertainty.* * * *

(2) To incorporate this uncertainty, the authorized official should derive a range of probability estimates for the important assumptions used to determine damages. In these instances,

the damage estimate will be the net expected present value of the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and, if relevant, compensable value.

* * * * *

(f) *Substitutability.* In calculating compensable value, the authorized official should incorporate estimates of the ability of the public to substitute resource services or uses for those of the injured resources. This substitutability should be estimated only if the potential benefits from an increase in accuracy are greater than the potential costs.

(g) *Compensable value during the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.* (1) In determining the amount of damages, the authorized official has the discretion to compute compensable value for the period of time required to achieve the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

(2) When calculating compensable value during the period of time required to achieve restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, the authorized official should follow the procedures described below. The procedures need not be followed in sequence.

(i) The ability of the injured resources to recover over the recovery period should be estimated. This estimate includes estimates of natural recovery rates as well as recovery rates that reflect management actions or resource acquisitions to achieve restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

(ii) A recovery rate should be selected for this analysis that is based upon cost-effective management actions or resource acquisitions, including a "No Action-Natural Recovery" alternative. After the recovery rate is estimated, compensable value should be estimated.

(iii) The rate at which the uses of the injured resources and their services will be restored through the restoration or replacement of the services should be estimated. This rate may be discontinuous, that is, no uses are restored until all, or some threshold level, of the services are restored, or continuous, that is, restoration or replacement of uses will be a function of the level and rate of restoration or replacement of the services. Where practicable, the supply of and demand for the restored services should be analyzed, rather than assuming that the services will be utilized at their full capacity at each period of time in the analysis. Compensable value should be discounted using the rate described in paragraph (e)(2) of this section. This estimate is the expected present value of uses obtained through restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

* * * * *

(h) *Scope of the analysis.* (1) The authorized official must determine the scope of the analysis in order to estimate compensable value.

(2) In assessments where the scope of analysis is Federal, only the compensable value to the Nation as a whole should be counted.

(3) In assessments where the scope of analysis is at the State level, only the compensable value to the State should be counted.

(4) In assessments where the scope of analysis is at the tribal level, only the compensable value to the tribe should be counted.

Subpart F—Post-Assessment Phase

18. Section 11.90 is amended by revising paragraph (c) to read as follows:

§ 11.90 Post-assessment phase—Report of Assessment.

* * * * *

(c) *Type B assessments.* For a type B assessment conducted in accordance with the guidance in subpart E of this part, the Report of Assessment shall consist of all the documentation supporting the determinations required in the Injury Determination phase, the Quantification phase, and the Damage Determination phase, and specifically including the test results of any and all methodologies performed in these phases. The preliminary estimate of damages shall be included in the Report of Assessment. The Restoration and Compensation Determination Plan, along with comments received during the public review of that Plan and responses to those comments, shall also be included in the Report of Assessment.

19. Section 11.91 is amended by adding a new paragraph (e) to read as follows:

§ 11.91 Post-assessment phase—demand.

* * * * *

(e) *Statute of limitations.* For the purposes of section 113(g) of CERCLA, the date on which regulations are promulgated under section 301(c) of CERCLA is the date on which the later of the revisions to the type A rule and the type B rule, pursuant to *State of Colorado* v. *United States Department of the Interior*, 880 F.2d 481 (D.C. Cir. 1989), and *State of Ohio* v. *United States Department of the Interior*, 880 F.2d 432 (D.C. Cir. 1989), is published as a final rule in the **Federal Register**.

20. Section 11.92 is amended to revise paragraph (b) to read as follows:

§ 11.92 Post-assessment phase—restoration account.

* * * * *

(b) *Adjustments.* (1) In establishing the account pursuant to paragraph (a) of this section, the calculation of the expected present value of the damage amount should be adjusted, as appropriate, whenever monies are to be placed in a non-interest bearing account. This adjustment should correct for the anticipated effects of inflation over the time estimated to complete expenditures for the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

(2) In order to make the adjustment in paragraph (b)(1) of this section, the authorized official should adjust the damage amount by the rate payable on notes or bonds issued by the United States Treasury with a maturity date that approximates the length of time estimated to complete expenditures for the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

* * * * *

21. Section 11.93 is amended to revise paragraph (a) to read as follows:

§ 11.93 Post-assessment phase—Restoration Plan.

(a) Upon determination of the amount of the award of a natural resource damage claim as authorized by section 107(a)(4)(C) of CERCLA, or sections 311(f)(4) and 311(f)(5) of the CWA, the authorized official shall prepare a Restoration Plan as provided in section 111(i) of CERCLA. The plan shall be based upon the Restoration and Compensation Determination Plan described in § 11.81 of this part. The Plan shall describe how the monies will be used to address natural resources, specifically what restoration, rehabilitation, replacement, or acquisition of the equivalent resources will occur. When damages for compensable value have been awarded, the Plan shall also describe how monies will be used to address the services that are lost to the public until restoration, rehabilitation, replacement, and/or acquisition of equivalent resources is completed. The Restoration Plan shall be prepared in accordance with the guidance set forth in § 11.81 of this part.

* * * * *

Dated: March 17, 1994.

Bonnie R. Cohen,

Assistant Secretary—Policy, Management, and Budget.

[FR Doc. 94–6749 Filed 3–24–94; 8:45 am]

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Friday
March 25, 1994

Part III

Department of Transportation

Coast Guard

33 CFR Parts 120 and 128
Security for Passenger Vessels and Passenger Terminals; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 120 and 128

[CGD 91-012]

RIN 2115-AD75

Security for Passenger Vessels and Passenger Terminals

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing rules that establish equipment standards, performance standards, and procedures for security against acts of terrorism on certain passenger vessels and associated passenger terminals. Passenger vessels over 100 gross tons carrying more than 12 passengers on voyages of over 24 hours on the high seas will be affected. These rules are necessary because lack of voluntary compliance with measures of the International Maritime Organization (IMO) published in 1986, or with these measures published as Coast Guard "guidelines" in 1987, requires mandatory compliance to attain "effective security measures."

DATES: Comments must be received on or before June 23, 1994.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2, 3406) [CGD 91-012], U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to Room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477. Comments on collection of information requirements must also be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attn: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

A copy of the material listed in "Incorporation by Reference" is available for inspection at Room 1108, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Gary W. Chappell, Office of Marine Safety, Security, and Environmental Protection (G-MPS-3), Room 1108, (202) 267-0491, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking [CGD 91-012] and the specific section of this proposal to which each comment applies, and give the reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. This proposal may change in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under ADDRESSES. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Mr. Gary W. Chappell, Project Manager, and Mr. Patrick J. Murray, Project Counsel, Office of Chief Counsel.

Background and Purpose

The vulnerability to terrorism of passenger vessels and associated passenger terminals has been a major national and international concern since the death of a citizen of the United States (U.S.) during the hijacking of the Achille Lauro in 1985. To address this threat, the President signed into law the "Omnibus Diplomatic Security and Antiterrorism Act" in 1986. That act amended the Ports and Waterways Safety Act, providing the Coast Guard authority to "carry out or require measures, including inspections, port and harbor patrols, the establishment of security and safety zones, and the development of contingency plans and procedures, to prevent or respond to acts of terrorism."

The IMO adopted and published "Measures to Prevent Unlawful Acts Against Passengers and Crews on Board Ships", also in 1986. Those measures, which are guidelines, apply to passenger ships engaged on international voyages of 24 hours or more and to the port facilities that serve them. The Coast Guard published a notice in the **Federal Register** listing these measures as "guidelines" and encouraging voluntary compliance [52 FR 11587, (April 9, 1987)].

Within the U.S., the Coast Guard has relied upon voluntary compliance with the IMO's measures and with its own guidelines based on them. Coast Guard encouragement to implement these guidelines has brought about varying degrees of acceptance. The initial response was promising, as many passenger vessels and associated passenger terminals operating in the U.S. began implementing these measures. However, most of those vessels and terminals implemented the measures only partly. Many of them cited cost as the main reason for not implementing the measures fully. Progress toward implementation of the measures has slowed significantly over the last three years. Some passenger vessels and passenger terminals still do not maintain and administer appropriate security measures.

The lack of voluntary compliance with the guidelines, on some passenger vessels and at some passenger terminals, indicates that mandatory compliance with rules enforced by penalties is necessary to attain "effective security measures" on passenger vessels making voyages on the high seas of 24 hours or more and at all passenger terminals associated with those vessels. Consequently, the Coast Guard is proposing rules that will specify appropriate equipment standards, performance standards, and procedures for security. The Coast Guard has modeled the proposed rules after the IMO's measures.

Discussion of Proposed Amendments

1. The Coast Guard would implement standards for security on passenger vessels and at passenger terminals by adding two parts to Chapter I of title 33 of the Code of Federal Regulations (CFR). Part 120, "Passenger Vessel Security", would go into Subchapter K, which would become "Security of Vessels." Part 128, "Passenger Terminal Security", would go into Subchapter L, which already governs "Waterfront Facilities."

2. Proposed § 120.100 would limit the applicability of the rules for passenger vessels. Passenger vessels that embark or disembark passengers in the U.S. fall under U.S. jurisdiction and are of interest since many of the passengers involved are U.S. citizens. The rules proposed here concern vessels of over 100 gross tons carrying more than 12 passengers for hire, making voyages any part of which is on the high seas, lasting 24 hours or more. Unlawful acts are likelier to occur on longer voyages. A segmented voyage with multiple stops is

considered a single voyage for determining applicability under this rule. Passenger vessels commonly make voyages with port calls less than 24 hours apart although the passengers return to the ship after each port call to continue their voyage, which lasts over 24 hours. Generally, vessels over 100 gross tons are over 65 feet long and carry more than 12 passengers. The Coast Guard considered other levels of gross tonnage, but the number of vessels that would be affected by changing the threshold of gross tonnage did not justify the variation in applicability between the safety and security regulations. Only 8 vessels under 1600 gross tons, only 5 of which are under 500 gross tons, would be subject to these rules. The high seas was selected as a limitation to applicability to passenger vessels because it is a well defined jurisdictional area. These limits accord with the IMO's guidelines.

3. Proposed § 120.110 would clarify the meanings of terms used in Part 120. Most are identical to definitions in other parts of Chapter I of Title 33. The term "passenger terminal" here includes waterfront facilities, as defined in the Ports and Waterways Safety Act, that receive passenger vessels subject to this rulemaking.

4. Proposed § 120.120 would incorporate standards of American Society for Testing and Materials (ASTM) for X-ray screening systems.

5. Proposed § 120.130 would let the Commandant (G–MPS) approve alternative procedures that provide a level of security equivalent to that provided by the rules proposed here. Alternative measures provide flexibility to allow for situations where compliance is economically or physically impracticable. They also allow for the use of better or cheaper equipment, performance, and procedures as these are developed.

6. Proposed § 120.200 would set out the performance standards for a security program on each covered passenger vessel.

7. Proposed § 120.210 would require the designation of restricted areas on each covered passenger vessel where access is limited to selected persons. Restricted areas would deter the introduction of prohibited persons, and prohibited weapons, incendiaries, or explosives into sensitive areas where they could be used to hijack a vessel. For each restricted area an intrusion detection system, with both local and remote alarms, would alert security personnel to any illicit entry.

8. Proposed § 120.220 would require the designation of a ship security officer, who would be responsible for managing day to day security on the vessel. Such designation is necessary to identify the person responsible for ensuring that the security program is carried out.

9. Proposed § 120.230 would require training, which is necessary to ensure that security personnel know how to perform their duties.

10. Proposed § 120.240 would mandate coordination of security activities between the vessel and each passenger terminal at which it calls. Such coordination is currently lacking. It would both eliminate duplication of efforts and reduce the likelihood of gaps in the security system.

11. Proposed § 120.250 would require reports of specified acts directed against the vessels or their passengers. These reports are necessary to inform the Coast Guard and other law enforcement agencies of the extent of such acts occurring so that they can allocate resources to deter or respond to similar acts in the future.

12. Proposed §§ 120.300, 120.305, and 120.307 would require a ship security plan and specify procedures for review and amendment of the plan. The ship security plan is the basic document that sets forth each vessel's strategy for security. It includes a written description of the ship security program, which comprises the ship security survey, the ship security bill, and various security procedures. This document provides a ready source of information for security personnel and law enforcement agencies which may be called upon to respond to an incident. It also enables the Coast Guard to evaluate the vessel's strategy for security. When the plan has been reviewed by the Coast Guard and found to meet the requirements, a letter of adequacy is provided to the operator. Since the plan must be updated from time to time, § 120.307 sets up the means for the operator to make amendments, either because of changed circumstances or when directed to do so. A provision is included to allow the imposition of emergency measures by the Coast Guard. No exemption from Freedom of Information Act disclosure requirements is currently provided for ship security plans. Comments are solicited on whether these plans should be exempted from Freedom of Information Act disclosure to preserve their confidentiality.

13. Proposed §§ 120.310 and 120.320 would require a ship security survey that provides the information necessary to develop the ship security plan. The procedures constituting the plan will depend upon the threats and vulnerabilities identified in the survey. The survey must undergo periodic updates to reflect changes in threats and vulnerability. The recent pace of changes in threats suggests that two years is the longest prudent interval between updates. The survey also needs to be updated when new ports are visited or there are changes to the vessel that may affect vessel security. An update is also required when there is a change in key vessel personnel because a change in these personnel may influence vessel security.

14. Proposed § 120.330 would require a ship security bill that indicates the security duties and watch schedules necessary to implement security procedures. This document not only informs members of the crew of their responsibilities but enables review of the duties and schedules by law enforcement agencies.

15. Proposed § 120.340 would require standard operating procedures relative to security (SSOPs) that set forth, in writing, routine activities (and standardized responses to certain non-routine situations). These procedures enable the operators of the vessels to train and inform security personnel. They also enable the Coast Guard to evaluate the adequacy of those activities and responses. In order for security measures to be effective, and because the measures must be tailored to the particular vessel and terminal, the rules do not contain detailed standards for the SSOPs. The Coast Guard will provide guidelines for the SSOPs to vessel and terminal operators and the rules provide for individualized consideration of SSOPs developed by vessel and terminal operators, including a process to resolve disagreements as to their adequacy.

16. Proposed § 120.350 would require identification procedures for personnel boarding passenger vessels and entering restricted areas on the vessels. These procedures are necessary to determine the eligibility of members of the crew, passengers, visitors, vendors, and other personnel for boarding or entry. In general the procedures provide for use of identification that bears a photograph of the person to verify the identity of the person seeking access. Although alterations to such identification cards are possible, alterations are generally detectable if the cards are properly laminated. Use of a voyage specific identification card bearing a photograph provides an inexpensive and convenient means of ensuring that persons reboarding the vessel at intermediate port stops are, in fact, passengers on that voyage.

17. Proposed § 120.360 would tell how to conduct screening of persons

and property boarding vessels or entering restricted areas on vessels. Screening is necessary to ensure that prohibited weapons, incendiaries, and explosives are not introduced onto the vessels or into restricted areas aboard them. Stricter screening is necessary for property accessible to passengers than for articles accessible only to members of the crew. Only a certain percentage of these articles such as ships' stores, would be required to undergo screening, or search. The fact that random screening is taking place will deter the smuggling of prohibited weapons, incendiaries, or explosives while minimizing the burden on vessel and terminal operators.

18. Proposed § 120.370 would require communication procedures to be established aboard each covered passenger vessel. Communications are important for summoning assistance from other members of the crew, from the passenger terminal, or from local law enforcement agencies in an actual or potential emergency. Distress signals are necessary in case the primary means of communications is damaged or destroyed.

19. Proposed § 120.400 would prohibit most carriage of weapons, incendiaries, and explosives on covered passenger vessels. Certain law enforcement officials may carry firearms. Inaccessible baggage may contain weapons under some circumstances.

20. Proposed § 120.410 would require lighting for security on covered passenger vessels during darkness. Lighting has proved effective in deterring unauthorized entry into secured areas.

21. Proposed § 120.420 would require local and remote alarms for the intrusion detection systems aboard passenger vessels required by § 120.210. Alarms are necessary to alert security personnel when intrusion occurs, because these systems are generally monitored in areas remote from the restricted areas. Early response is critical to security, and without alarms, intrusions could go unnoticed.

22. Proposed § 120.430 would specify screening systems to detect prohibited weapons, incendiaries, and explosives before they could be carried aboard vessels. Those systems generally comprise X-ray machines, metal detectors, and manual searches; they may include either dogs trained to detect explosives or explosives detecting machines. The specifications for X-ray systems draw on standards of ASTM, which include, for existing technology, appropriate settings and sensitivity of the systems' components. In order for these security measures to be effective, and because the measures employed will vary for each vessel and terminal, detailed requirements other than the ASTM standard for X-ray systems, if used, are not contained in the rules. Security measures developed by vessel and terminal operators will be reviewed for adequacy and appropriateness for the particular vessel and terminal.

23. Proposed § 120.440 would set the requirements for testing and maintenance of security equipment. Unless security equipment is appropriately maintained, failure is likelier; unless it is periodically tested or checked, failure is likelier to go undetected for a long time.

24. Proposed § 120.450 would require records of checks and maintenance of security equipment. Records are necessary for the Coast Guard to verify that equipment is being cared for properly.

25. Proposed § 128.100 would limit the applicability of the rules for passenger terminals. Only those waterfront facilities that serve passenger vessels subject to part 120 need satisfy these requirements.

26. Proposed §§ 128.110 through 128.430 are analogous to proposed §§ 120.110 through 120.430 because the subjects are analogous. Section 128.210 excludes the boarding area for passengers from the requirement of an intrusion detection system because the extent of the typical area makes such a system impracticable. Signs for restricted areas on passenger terminals are only required in English. Comments are sought on the need to require signs in other languages for restricted areas on U.S. passenger terminals.

27. Proposed § 128.435 would specify security barriers. The ease of access to passenger terminals from surrounding areas makes barriers necessary to deter unauthorized entry into terminals. General practices from industry helped form the standards for the construction of security fences and walls.

28. Proposed §§ 128.440 through 128.450 are analogous to proposed §§ 120.440 through 120.450 because the subjects are analogous.

Incorporation by Reference

The following material would be incorporated by reference: ASTM F792–82, Design and Use of Ionizing Radiation Equipment for the Detection of Items Prohibited in Controlled Access Areas, 1982.

Copies of the material are available for inspection where indicated under **ADDRESSES.** Copies of the material are available at the addresses in §§ 120.120 and 128.120.

Before publishing final rules, the Coast Guard will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 but is considered significant under the Department of Transportation Regulatory Policies and Procedures [44 FR 11040 (February 26, 1979)] because it is a high priority project within the Coast Guard and involves important Departmental policy. A draft Regulatory Evaluation is available in the docket for inspection or copying where indicated under **ADDRESSES.**

The Coast Guard anticipates that approximately 100 passenger vessels and 53 passenger terminals would be affected. Of the passenger vessels, approximately 97 are cruise vessels carrying in excess of 100 passengers operating out of U.S. ports. All of the terminals service these cruise vessels. There may be up to 40 vessels and 20 terminals that would be subject to these rules only on an occasional basis.

Initial implementing costs are estimated to be $14 million, of which approximately $12 million would be for security equipment. Annual operating costs are estimated to be $10 million.

Small Entities

Under the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*], the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under § 3 of the Small Business Act [15 U.S.C. 632].

This rulemaking could have more than a minimal impact on a few small entities, but most passenger vessels making voyages on the high seas of 24 hours or more, and most terminals associated with them, are neither owned nor operated by small entities. Security requirements for small vessels and terminals will be less complex and less expensive to implement than for large vessels and terminals. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business qualifies as a small entity and that this proposal will have a significant economic impact on your business,

please submit a comment (see ADDRESSES) explaining why you think your business qualifies and in what way and to what degree this proposal will economically affect your business.

Collection of Information

Under the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*], the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection of information requirement, to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements including reporting, recordkeeping, notification, and other, similar requirements.

This proposal contains collection of information requirements in the following sections:

Section	Topic
120.230	Training.
120.250	Reporting of unlawful acts and related activities.
120.300	Plan: general.
120.305	Plan: letter of adequacy.
120.307	Plan: amendment.
120.310	Survey: general.
120.330	Bill.
120.340	Security standard operating procedures.
120.350	Identification.
120.450	Records.
128.230	Training.
128.250	Reporting of unlawful acts and related activities.
128.300	Plan: general.
128.305	Plan: letter of adequacy.
128.307	Plan: amendment.
128.310	Survey: general.
128.330	Bill.
128.340	Security standard operating procedures.
128.350	Identification.
128.450	Records.

The Coast Guard has submitted the requirements to OMB for approval under subsection 3504(h) of the Paperwork Reduction Act.

Title: Security for Passenger Vessels and Passenger Terminals;

Need for Information: Protect the public from injury, prevent damage to property, and avoid economic losses;

Proposed Use of Information: Regulatory compliance, program management, and program evaluation;

Frequency: On Occasion; *Burden Estimate:* 42,408 hours; *Respondents:* 153; *Forms:* None;

Average Burden Hours Per Respondent: 277. Persons submitting comments on the requirements should submit their comments both to OMB and to the Coast Guard where indicated under ADDRESSES.

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. This action carries out Coast Guard statutory authority in the area of maritime safety. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects

33 CFR Part 120

Security, Passenger vessels, Reporting and recordkeeping requirements.

33 CFR Part 128

Security, Waterfront facilities, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard proposes to amend chapter I of title 33, Code of Federal Regulations, as follows:

1. Subchapter K is added to read as follows:

SUBCHAPTER K—SECURITY OF VESSELS

Parts
120 Passenger Vessel Security.
128 Passenger Terminal Security.

PART 120—PASSENGER VESSEL SECURITY

Subpart A—General

Sec.
120.100 Applicability.
120.110 Definitions.
120.120 Incorporation by reference.
120.130 Alternatives.

Subpart B—Security Program

120.200 General.
120.210 Restricted areas.
120.220 Ship security officer.
120.230 Training.
120.240 Coordination with terminal security.
120.250 Reporting of unlawful acts and related activities.

Subpart C—Ship Security Plan and Procedures

120.300 Plan: general.
120.305 Plan: letter of adequacy.
120.307 Plan: amendment.
120.310 Survey: general.
120.320 Survey: contents.
120.330 Bill.
120.340 Security standard operating procedures.
120.350 Identification.
120.360 Screening.
120.370 Communications.
120.380 Prohibition against carriage of weapons.

Subpart D—Equipment

120.410 Lighting.
120.420 Alarms.
120.430 Screening.
120.440 Maintenance.
120.450 Records.

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

Subpart A—General

§ 120.100 Applicability.

This part applies to—

(a) All passenger vessels over 100 gross tons making a voyage on the high seas lasting 24 hours or more, during which more than 12 passengers are carried for hire, and for which passengers are embarked or disembarked in the United States or its territories; and

(b) All U.S. flag passenger vessels over 100 gross tons making a voyage on the high seas lasting 24 hours or more, during which more than 12 passengers are carried for hire.

§ 120.110 Definitions.

As used in this part:

Captain of the Port (COTP) means the Coast Guard officer designated by the Commandant to command a Captain of the Port Zone as described in part 3 of this chapter, or an authorized representative.

Commandant means the Commandant of the U.S. Coast Guard, or an authorized representative. Letters should be sent to Commandant (G-MPS), 2100 Second Street SW., Washington, DC 20593-0001.

High seas means all waters that are neither territorial seas nor internal waters of the United States or of any foreign country as defined in part 2, subpart 2.05, of this chapter.

Operator means the person, company, or governmental agency, or the representative of a company or governmental agency, that maintains operational control over a passenger vessel or passenger terminal.

Passenger terminal means any structure used for the assembling, processing, embarking, or disembarking of passengers or baggage for vessels

subject to this part. It includes: Piers, wharves, and similar structures to which a vessel may be secured; land and water under or in immediate proximity to these structures; buildings on or contiguous to these structures; and equipment and materials on or in these structures.

Unlawful act means an act that is a felony under U.S. federal law or under the laws of the state where the vessel is located.

Voyage means the passenger vessel's entire course of travel, from the first port at which the vessel embarks passengers until its return to that port.

§ 120.120 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 54 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, (G–MPS), 2100 Second Street SW., Washington, DC, 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The materials approved for incorporation by reference in this part and the sections affected are:

American Society for Testing and Materials (ASTM)
1916 Race Street, Philadelphia, PA 19103
ASTM F–792–82, Design and Use of Ionizing Radiation Equipment for the Detection of Items Prohibited in Controlled Access Areas, 1982—120.430

§ 120.130 Alternatives.

(a) The Commandant may consider and approve alternative procedures or standards for an operator of a vessel to which this part applies to use instead of any procedure or standard required by this part if upon the Commandant's determination—

(1) Compliance with the one required is economically or physically impracticable;

(2) The alternative provides an equivalent level of security; and

(3) The operator submits a written request for the alternative, which contains sufficient information to establish, to the satisfaction of the Commandant, that the alternative provides an equivalent level of security.

(b) The Commandant will approve or disapprove the request, in writing, within 30 days of receipt of the written request.

Subpart B—Security Program

§ 120.200 General.

(a) Each operator of a vessel to which this part applies shall implement for each vessel a program that—

(1) Provides for the safety of persons and property traveling aboard the vessel, against acts of piracy and criminal violence;

(2) Prevents or deters the carriage aboard the vessel of any prohibited weapon, incendiary, or explosive on or about any person or within his or her personal articles or baggage, and the carriage of any prohibited weapon, incendiary or explosive in stowed baggage, cargo, or stores;

(3) Prevents or deters unauthorized access to the vessel and to restricted areas aboard the vessel;

(4) Provides means to meet the requirements of this part for normal operations and addresses increased security measures to be implemented when advised by the Commandant or COTP of an increased threat to the vessel or persons on the vessel;

(5) Designates, by name, a ship security officer for the vessel;

(6) Ensures that all members of the crew are adequately trained to perform their duties relative to security;

(7) Provides for coordination with terminal security while in port; and

(8) Includes the equipment, plans, and procedures required by Subparts B and C of this part.

(b) Each operator of a vessel to which this part applies shall, where practicable, work with the operator of each terminal at which the vessel embarks or disembarks passengers, to provide security for the passengers and the vessel. The vessel, however, need not duplicate any provisions of this part fulfilled by the terminal unless directed by the Commandant.

§ 120.210 Restricted areas.

(a) Each operator of a vessel to which this part applies shall designate the following areas of the vessel as "restricted areas".

(1) The navigational bridge.

(2) The communications center or radio room.

(3) The engine room.

(4) The administrative spaces.

(5) The armory.

(6) Control rooms for fire fighting equipment.

(7) Other areas, determined by the operator, to which access must be restricted to maintain the security of the vessel.

(b) Each restricted area must be appropriately secured, with access limited to authorized personnel.

(c) Each restricted area must be distinctly marked with a placard, mounted at eye level, that is at least 20 centimeters (8 in) high by 30 centimeters (12 in) wide with the words "Restricted Area—Authorized Personnel Only" in red letters, at least 5 centimeters (2 in) high, on a white background, in enough languages that each member of the crew can understand at least one of them.

(d) Each restricted area must be equipped with an intrusion detection system that activates an audible alarm in accordance with § 120.420(a).

(e) Each restricted area and its intrusion detection system must be designated in the plan required by § 120.300.

§ 120.220 Ship security officer.

(a) Each operator of a vessel to which this part applies shall designate a ship security officer for the vessel.

(b) This officer shall be responsible for—

(1) Conducting, amending, and updating the survey required by § 120.310;

(2) Instituting, monitoring, and recording training for members of the crew relative to security;

(3) Conducting regular inspections of the vessel;

(4) Proposing modifications to the plan required by § 120.300, to correct its deficiencies and satisfy the security requirements of the vessel;

(5) Encouraging vigilance, as well as general awareness of security, aboard the vessel;

(6) Reporting all occurrences or suspected occurrences of unlawful acts and related activities in accordance with § 120.250; and

(7) Coordinating, with the terminal security officer of each terminal at which the vessel embarks or disembarks passengers, implementation of the plan required by § 120.300.

§ 120.230 Training.

(a) Training for security aboard each vessel to which this part applies is the responsibility of the operator and the ship security officer of the vessel.

(b) This training must be provided to all members of the crew with security duties and must emphasize measures to take when advised by the Commandant or the COTP of an increased threat to the vessel or persons on the vessel.

(c) Subjects for training must include, but need not be limited to—

(1) Communications;

(2) Control of access;

(3) Patrol;
(4) Response to emergencies;
(5) Reporting;
(6) Characteristics and behavior of persons who may commit unlawful acts;
(7) Review of security standard operating procedures (SSOPs) for the vessel; and
(8) Support from shoreside relative to security.

(d) A record of the date and kind of training for security aboard ship provided to each member of the crew receiving training must stay on the vessel for the duration of the member's employment plus six months. The operator shall make all such records available to the COTP upon request.

§ 120.240 Coordination with terminal security.

(a) Before embarking or disembarking passengers at a passenger terminal, the operator of a vessel to which this part applies shall, where practicable, work with the operator of the terminal, to provide security for the passengers and the vessel. The operator of the vessel need not duplicate any provisions of this part fulfilled by the operator of the terminal unless directed by the Commandant.

(b) The operator of the vessel shall—
(1) Agree, as far as possible, in writing, with the operator of the terminal which responsibilities the terminal will fulfill and which the vessel will;
(2) Establish communications with the terminal immediately after mooring;
(3) Provide the terminal with a list of passengers and a list of all scheduled deliveries and services to the vessel; and
(4) Obtain a copy of the terminal security plan.

(c) If the vessel embarks or disembarks passengers where there is no terminal, the operator of the vessel shall fulfill all of the responsibilities in this part.

§ 120.250 Reporting of unlawful acts and related activities.

(a) Each member of the crew trained under § 120.230 having knowledge of an unlawful act, a suspicious activity, a breach of security, or a threat against the vessel or persons on board shall notify the operator of the vessel, the master or ship security officer of the vessel, or another representative of the operator. If the member cannot notify any of these, the member shall notify the COTP.

(b) The operator of the vessel or the operator's representative shall report each breach of security, unlawful act, or threat of an unlawful act against the vessel or persons aboard it that occurs in a place subject to the jurisdiction of the United States to the COTP and to the local office of the Federal Bureau of Investigation (FBI). Also, the operator of each United States flag vessel shall report each such incident that occurs in a place outside the jurisdiction of the United States to the Commandant.

(c) Each report required by paragraph (b) of this section must include, to the extent known—
(1) The vessel's name;
(2) The vessel's flag;
(3) The name of the vessel's master;
(4) If the vessel is moored to a passenger terminal, the name of the terminal security officer;
(5) An account of the incident;
(6) The date, time and place of the incident;
(7) The number of alleged offenders;
(8) The method used to introduce any prohibited weapon, incendiary, or explosive into or onto the vessel;
(9) A description of any weapon, incendiary, or explosive involved;
(10) A description of how any weapon, incendiary, or explosive involved was concealed and used;
(11) A description of how security was breached; and
(12) A statement of what measures have been taken or will be taken to prevent another such incident.

(d) Use of the form "Report on an Unlawful Act", contained in the "Measures to Prevent Unlawful Acts Against Passengers and Crews on Board Ships" published by the International Maritime Organization in 1986, is encouraged.

(e) Each report must stay on file with the plan required by § 120.300 for a period of two years. All reports shall be used by the person preparing the next survey required by § 120.310.

Subpart C—Ship Security Plan and Procedures

§ 120.300 Plan: general.

(a) Each operator of a vessel subject to this part shall develop and maintain, in writing, a ship security plan that—
(1) Describes the program required by § 120.200;
(2) Includes the survey required by § 120.310, the bill required by § 120.330, and the SSOPs required by § 120.340;
(3) Includes an appendix, for each port in which the vessel embarks or disembarks passengers, that describes port specific security information.

(b) The operator shall amend the plan to address any known deficiencies and to satisfy the security requirements of the vessel each time the survey is updated under § 120.310(b); and

(c) The plan must contain procedures to—
(1) Deter unauthorized access to the vessel and its restricted areas;
(2) Deter the introduction of prohibited weapons, incendiaries, or explosives aboard the vessel;
(3) Encourage vigilance, as well as general awareness of security aboard the vessel;
(4) Provide adequate training to members of the crew for security aboard the vessel;
(5) Coordinate responsibilities for security with the operator of each terminal at which the vessel embarks or disembarks passengers; and
(6) Provide information to members of the crew and law enforcement personnel, in case of an incident affecting security.

(d) The operator shall furnish to the COTP for each port at which the vessel calls, a copy of each plan or amendment found adequate under § 120.305 or § 120.307. The copy shall be furnished to the COTP at least 7 days prior to the first call at the port.

§ 120.305 Plan: letter of adequacy.

(a) Each operator of a passenger vessel subject to this part shall submit the ship security plan required by § 120.300 to the Commandant (G–MPS), 2100 Second Street SW., Washington, DC, 20593–0001 for review before [*Insert date 90 days after date of publication of the final rule in the* **Federal Register**], or at least 60 days before embarking passengers on a voyage described in § 120.100, whichever is later.

(b) Within 30 days after receipt of a proposed ship security plan, the Chief, Port Safety and Security Division will issue to the operator either a letter of adequacy certifying that the ship security plan adequately addresses the requirements of this part or a notice of deficiencies in the plan relative to the requirements of this part.

(c) Within 30 days after receipt of a notice of deficiencies, the operator may either submit a modified ship security plan or submit an appeal of the notice of deficiencies to the Chief, Office of Marine Safety, Security and Environmental Protection. The decision of the Chief, Office of Marine Safety, Security and Environmental Protection is a final agency action.

(d) The Chief, Port Safety and Security Division may void the letter of adequacy if the operator—
(1) Amends the ship security plan without following the procedures in § 120.307;
(2) Fails to amend the ship security plan when required by the Commandant; or
(3) Fails to update the ship security plan as required by § 120.300(d).

(e) No vessel subject to this part shall embark or disembark passengers in the United States after [*Insert date 120 days after date of publication of the final rule in the* **Federal Register**] unless it has a valid letter of adequacy for its ship security plan or an appeal under paragraph (c) of this section is pending.

§ 120.307 Plan: amendment.

(a) Amendments to update the ship security plan may be initiated by the operator of a passenger vessel subject to this part or directed by the Commandant.

(b) If initiated by the operator, each proposed amendment to the ship security plan, including changes to the enclosures required by § 120.300(a), must be submitted to the Commandant for review at least 30 days before the proposed effective date, unless a shorter period is allowed by the Commandant.

(c) The Commandant may direct the operator of a passenger vessel subject to this part to amend the ship security plan if it is determined that implementation of the plan is not providing effective security or there is an increased threat affecting the vessel. Except in an emergency, a written notice of matters to be addressed will be issued to the operator and the operator will be provided at least 60 days to submit proposed amendments.

(d) Within 15 days after receipt of a proposed amendment, the Chief, Port Safety and Security Division will issue a letter to the operator either accepting the proposed amendment or addressing why the proposed amendment does not adequately meet the requirements of this part.

(e) A notice to amend a ship security plan or a rejection of a proposed amendment by the Chief, Port Safety and Security Division may be appealed within 30 days of receipt as provided in § 120.305.

(f) If there is an emergency or other circumstance that makes the procedures in paragraphs (c), (d) and (e) of this section impractical, the COTP may order the operator of a vessel subject to this part to implement increased security measures immediately. The order will incorporate a statement of the reasons for the emergency action. Orders issued by the COTP may be appealed as provided in § 160.7 of this chapter.

§ 120.310 Survey: general.

(a) Each operator of a passenger vessel subject to this part shall conduct an initial, comprehensive ship security survey before preparing the plan required by § 120.300.

(b) The operator shall update the survey at least every two years and whenever there is a—

(1) Notification from the Commandant or the COTP of an increased threat to the ports and waterways visited; or

(2) New port added to the itinerary of the vessel.

(c) The operator shall update the survey and notify the Commandant within 10 days of a—

(1) Change in the description of the vessel required by § 120.320(g); or

(2) Change in the owner, operator, or master of the vessel or in the operator's representative.

(d) The survey must address potential threats against the vessel or persons aboard it, while it is under way, anchored, or moored and must consider the vulnerability of the vessel to those threats at each terminal, anchorage, and waterway used.

(e) The operator shall ensure that distribution, disclosure, and availability of information contained in the survey is confined to those persons with an operational need to know. These persons include the operator, the master, the ship security officer, the terminal security officer, and appropriate law enforcement officials. When not under supervision, copies of the survey under the control of the operator must be kept in a locked safe or other secure container, to prevent disclosure to unauthorized persons.

§ 120.320 Survey: contents.

The survey required by § 120.310 must include—

(a) The date of the survey;

(b) The date of the last such survey;

(c) The name and call sign of the passenger vessel;

(d) The names of the owner, operator, and master of the vessel;

(e) The name, business address, and telephone number of the operator's representative in each U.S. port visited;

(f) The flag of registry of the vessel;

(g) A description of the vessel that includes—

(1) The length overall;

(2) The draft forward and aft under full load;

(3) The gross tonnage;

(4) The year built;

(5) The number of passenger berths aboard;

(6) A schematic showing the general layout of the vessel;

(7) A schematic showing the place and purpose of each actual and potential point of access, including each door, hatch, and passageway;

(8) A schematic or list indicating the kind, place, area of illumination, and intensity of all security lighting;

(9) A schematic or list indicating the location of each restricted area designated under § 120.210 and each means of securing it;

(10) A description of each intrusion detection system installed;

(11) A schematic or list indicating the kind and place of emergency and standby equipment for maintenance of essential services aboard the vessel;

(12) The open deck arrangement including the height of the deck above the water;

(13) Waterline profile photographs of both port and starboard sides of the vessel;

(14) An aerial photograph of the vessel;

(15) A list of all firearms carried aboard the vessel, other than those in secure baggage, indicating the persons to whom they are issued or the locations in which they are stored; and

(16) A list of the types of ammunition and pyrotechnics carried aboard the vessel indicating the locations in which they are stored;

(h) An account of the normal manning of the vessel that includes—

(1) The number of officers assigned; and

(2) The number of members of the crew assigned;

(i) A list of each SSOP in effect;

(j) Security equipment in use, including that for inspection, control, monitoring, firefighting, lifesaving, and communication; alarms; lighting; and intrusion detection systems;

(k) Information on current threats of unlawful acts provided to the vessel by the Commandant or COTP for each terminal, port area, anchorage, and waterway used;

(l) An assessment of the vulnerability of the vessel to each threat identified in paragraph (k) of this section;

(m) A list of the measures and procedures in the ship security plan to counter each threat identified in paragraph (k) of this section; and

(n) A description of the ability of the screening points of the vessel to detect prohibited weapons, incendiaries, and explosives on persons, or in personal articles, baggage, cargo, and stores.

§ 120.330 Bill.

(a) Each operator of a vessel to which this part applies shall develop a ship security bill.

(b) The bill must set forth—

(1) The name of each member of the crew assigned a duty relative to security;

(2) Each duty relative to security assigned; and

(3) The station at which each duty will be performed.

(c) A copy of the bill must be available to the deck watch officer on the navigational bridge and provided to each member of the crew assigned a security related duty.

(d) The bill must constitute part of the plan required by § 120.300 and must be reviewed and, if necessary, updated each time the survey is updated under § 120.310 (b) and (c).

§ 120.340 Security standard operating procedures.

(a) Each operator of a vessel to which this part applies shall develop security standard operating procedures (SSOPs) that detail the number and duties of all members of the crew required for each activity relative to security aboard ship. Each SSOP must be reviewed and, if necessary, updated each time the survey is updated under § 120.310 (b) and (c).

(b) The operator shall determine the number and duties of members of the crew required for normal operations and for an increased level of security, based on information in the survey and on the advice of the master and the ship security officer.

(c) Each SSOP must differentiate as far as it can between actions appropriate for routine situations, increased security levels, and emergency situations.

(d) Unless otherwise directed by the Commandant, the operator shall develop an SSOP for—

(1) Watches and patrols conducted while the vessel is under way, anchored, or moored;

(2) Tracking the arrival and departure of vendors, repair personnel, dock workers, and visitors boarding the vessel;

(3) Inspection, control, and monitoring of persons, personal articles, and baggage coming onto the vessel;

(4) Inspection, control, and monitoring of cargo, stores, and stowed baggage accessible only to members of the crew designated by the operator;

(5) Communications for emergency and routine situations;

(6) Response to suspicious packages, baggage, or cargo identified while the vessel is under way, anchored, or moored;

(7) Response to prohibited weapons found or suspected;

(8) Security during response to fire or explosion aboard the vessel or on a terminal to which the vessel is moored;

(9) Response to an incendiary or explosive found or suspected aboard the vessel;

(10) Response to unauthorized armed persons detected aboard the vessel;

(11) Response to a breach of security or to suspicious activity aboard, or near, the vessel;

(12) Procedure for reporting a breach of security or a suspicious activity;

(13) Response to alarms;

(14) Security while rendering assistance at sea;

(15) Use of security equipment, including any intrusion detection or surveillance system installed aboard the vessel;

(16) Issuance of, use of, and accountability for identification cards; and

(17) Issuance of, use of, and accountability for keys.

(e) An SSOP must address watches when the vessel is—

(1) Underway, for:

(i) Each deck.

(ii) The uppermost deck, fore and aft.

(iii) The communications center.

(iv) The navigational bridge.

(v) The engine room;

(2) At anchor or moored, for:

(i) Each point of access.

(ii) Each deck topside.

(iii) The communications center.

(iv) The navigational bridge; and

(3) Receiving or discharging passengers or stores, for:

(i) Each point of access.

(ii) Each stowage area.

(iii) The main deck (roving patrol).

(iv) The communications center.

(v) The navigational bridge.

(f) The SSOP respecting issuance of, use of, and accountability for keys must include—

(1) A record of each person issued a key to a restricted area;

(2) An inventory of keys to restricted areas that are not issued to members of the crew;

(3) Designation of a secure container for storing keys to restricted areas that are not issued to members of the crew; and

(4) Steps to take if a key to a restricted area is lost or missing.

§ 120.350 Identification.

(a) Each operator of a vessel to which this part applies shall establish a system of identification and control of personnel for the vessel that—

(1) Designates, in writing, each category of persons authorized to be aboard the vessel and each person authorized to be in a restricted area;

(2) Allows access only to persons designated in accordance with paragraph (a)(1) of this section; and

(3) Establishes procedures meeting the requirements in paragraphs (b), (c) and (d) of this section for identifying each person authorized access to the vessel or to a restricted area aboard the vessel.

(b) Each operator of a vessel to which this part applies shall issue an identification card to each member of the crew and other employee. The ship security officer shall maintain a record of each identification card issued and of each blank one aboard, by number. Unissued identification cards must be kept in a locked safe or other secure container accessible only to the master, the ship security officer, and other designated employees. The identification card must—

(1) Be made of durable material that can be imprinted with appropriate identifying information;

(2) Include a color photograph, approximately 3 centimeters (1¼ in) by 3.6 centimeters (1½ in);

(3) Be laminated on both sides, with a clear plastic material that resists aging, discoloration, and separation; and

(4) Contain the following:

(i) Cardholder's name.

(ii) Cardholder's date of birth.

(iii) Cardholder's height.

(iv) Cardholder's weight.

(v) Color of cardholder's hair.

(vi) Color of cardholder's eyes.

(vii) A unique number.

(viii) Name of the vessel, cruise line, or company that employs cardholder.

(ix) An expiration date, not later than two years after the date of issue.

(c) The operator shall provide for each contractor, vendor, and other visitor a temporary identification card that—

(1) Contains a unique number;

(2) Is issued upon cardholder's boarding the vessel and retrieved upon cardholder's leaving the vessel;

(3) Is signed for by the cardholder or, for children, a responsible adult, indicating their reason for boarding the vessel; and

(4) Is strictly accounted for, by number.

(d) Each operator shall establish a procedure for identifying each passenger each time the passenger boards the vessel. The procedure must require an identification document containing a photograph of the holder to identify each passenger over the age of 10 and shall compare the name of the person so identified against the official passenger list of the vessel. The identification document may be one provided by the passenger such as a driver's license, passport, or armed forces identification card, or one provided by the operator. The operator shall issue an identification document containing a photograph of the holder to any passenger over the age of 10 not possessing such a document. Passengers presenting an identification document containing a photograph of the holder issued by the operator that is unique to the voyage need not be verified against the official passenger list of the vessel.

§ 120.360 Screening.

(a) Each personal article and each piece of baggage brought aboard a vessel to which this part applies and not stored in a restricted area must undergo a thorough check. The check may take the form of a manual search, an electronic screening, or equivalent means acceptable to the Commandant.

(b) Each person boarding the vessel shall undergo a metal detector check.

(c) The checks required by paragraphs (a) and (b) of this section apply to each boarding of the vessel.

(d) When in a port or place subject to the jurisdiction of the United States, only the following persons may board the vessel until the U.S. Customs Service ("Customs") declares the vessel "cleared":

(1) Officials of Customs.

(2) Officials of the Coast Guard.

(3) Officials of the U.S. Immigration and Naturalization Service.

(4) Officials of the U.S. Department of Agriculture.

(5) Officials of the U.S. Public Health Service.

(6) Port Authority Police.

(7) The shoreside representative of the passenger vessel, designated by the operator of the vessel.

(8) Repair and maintenance personnel cleared by Customs.

(9) Other persons cleared by Customs.

(e) When in a port or place subject to the jurisdiction of the United States, only the following persons may leave the vessel until Customs declares the vessel "cleared":

(1) The pilot.

(2) Members of the crew involved in docking.

(3) Members of the crew cleared by Customs for early departure.

(4) Passengers cleared by Customs for early departure.

(f) One or more guards shall watch each gangway whenever it is accessible.

(g) A written notice, legible in the assembly area shoreside of the screening station, must be posted to advise persons boarding the vessel that security checks are being conducted. The notice must be written in English except that, where a language other than English is widespread, it must be written in both English and the other language.

(h) No persons refusing to submit to a security check at a point of access may enter the vessel. Each person denied entry for refusing to submit to a security check shall, if possible, be identified and reported to appropriate authorities.

(i) Before being placed aboard the vessel—

(1) All cargo and stores, and all baggage destined for a restricted area, must undergo a brief inspection; and

(2) A percentage of the cargo, stores, and baggage, specified by the Commandant, shall be selected at random and thoroughly checked by manual search, electronic screening, or equivalent means acceptable to the Commandant.

(j) Each piece of baggage must be marked, labeled, tagged, or otherwise identified as belonging to a particular passenger and must be compared against the official passenger list of the vessel. No unidentified baggage may go aboard. Baggage identified as belonging to a passenger that does not sail with the vessel must be turned over to the vessel security officer for disposition.

(k) All cargo and stores, and all baggage destined for a restricted area, must remain under supervision after inspection or thorough check until stowed.

(l) No stores may be accepted aboard the vessel unless accompanied by a clearly itemized manifest that accurately sets forth the kinds and amounts of stores delivered.

§ 120.370 Communications.

(a) The operator of each vessel subject to this part shall ensure that security personnel have a means of continuous communications, such as radio, telephone, or intercom, that enables them to communicate with the ship security officer, the navigational bridge, the communications center, or security personnel shoreside from their duty stations.

(b) Roving patrols shall be equipped with radios, cellular telephones, or other portable means of communications.

(c) Communications shall be established with each passenger terminal at which the vessel docks, immediately after mooring.

(d) A distress signal peculiar to security, indicating a security alert, must be established that is—

(1) Part of the SSOP for communications;

(2) Known by each member of the crew; and

(3) Changed from time to time, but not less often than once every three months.

(e) The SSOP for communications must specify the kind of communications to use for responding to a breach of security, an unlawful act, or other emergency.

§ 120.380 Prohibition against carriage of weapons.

(a) Except as provided below, no person may, while aboard a vessel subject to this part in waters subject to the jurisdiction of the United States as defined in § 2.05–30 of this chapter, carry on or about his or her person a deadly weapon, an incendiary containing more than one half kilogram (1.1 lb) of flammable material, or an explosive, whether concealed or unconcealed. This paragraph does not apply to weapons carried by—

(1) Government officials on official business who are authorized by their government to carry those weapons; or

(2) Members of the crew or other persons who are authorized by the operator of the vessel to carry those weapons.

(b) No person may introduce, onto any vessel subject to this part or into any baggage, cargo, or stores destined for a vessel subject to this part, a deadly weapon, an incendiary containing more than one half kilogram (1.1 lb) of flammable material, or an explosive, unless—

(1) The baggage, cargo, or stores are deposited with the operator of the vessel;

(2) Before depositing the baggage, cargo, or stores, the passenger, shipper, or vendor has notified the operator that the weapon, incendiary, or explosive is in the baggage, cargo, or stores; and

(3) The baggage, cargo, or stores are carried in a restricted area aboard the vessel inaccessible to passengers.

Subpart D—Equipment

§ 120.410 Lighting.

(a) While it is under way, anchored, or moored, each vessel subject to this part must have its deck and hull illuminated during darkness and restricted visibility. While the vessel is moored, the illumination must consist of a 360 degree zone of glare projected light extending beyond the hull for at least 60 meters (200 ft).

(b) All external lighting must be located or shielded so that it will not interfere with safe navigation and complies with the rules of the road in Subchapters D and E of this chapter.

(c) On deck, controlled lighting must be operable from both the navigational bridge and the engine room, independently, and be connected to a separate electrical circuit from the glare projected exterior lighting.

§ 120.420 Alarms.

(a) Each intrusion detection system required by § 120.210(e) must activate an alarm when it detects an intrusion. The alarm must sound where the detector is and on the navigational bridge.

(b) Alarms may also be used for other security purposes, such as alerting security personnel or other members of the crew to breaches of security or other unlawful acts.

§ 120.430 Screening.

The screening systems for persons, personal articles, baggage, cargo, and stores must be capable of detecting prohibited weapons, incendiaries, and explosives in accordance with the ship security plan. X-ray systems must be designed and used in accordance with ASTM F–792–82.

§ 120.440 Maintenance.

(a) The operator of each vessel subject to this part shall ensure that security equipment is checked and maintained in good working condition, as required by this section.

(b) Communications equipment must be checked on each watch.

(c) Doors, locks, alarms, and intrusion detection systems must be checked each day.

(d) Interior and exterior security lighting must be checked for proper operation when activated each night.

(e) All security equipment not used each day must be checked each week.

(f) Any defective or missing security equipment must be reported immediately to the master, the ship security officer, or the deck watch officer of the passenger vessel.

§ 120.450 Records.

Each operator of a vessel to which this part applies shall keep a record of each check required under § 120.440 and shall retain each record for at least 30 days after the date of the check.

PART 128—PASSENGER TERMINAL SECURITY

Subpart A—General

Sec.

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Subpart D—Equipment

128.410 Lighting.
128.420 Alarms.
128.430 Screening.
128.435 Barriers.
128.440 Maintenance.
128.450 Records.

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

Subpart A—General

§ 128.100 Applicability.

This part applies to all passenger terminals used for the assembling, processing, embarking, or disembarking of passengers or baggage for passenger vessels over 100 gross tons making a voyage on the high seas lasting 24 hours or more and carrying more than 12 passengers for hire.

§ 128.110 Definitions.

The definitions in Part 120 of this chapter apply to this part.

§ 128.120 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, (G–MPS), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The materials approved for incorporation by reference in this part and the sections affected are:

American Society for Testing and Materials (ASTM)

1916 Race Street, Philadelphia, PA 19103

ASTM F–792–82, Design and Use of Ionizing Radiation Equipment for the Detection of Items Prohibited in Controlled Access Areas, 1982—128.430

§ 128.130 Alternatives.

(a) The Captain of the Port (COTP) may consider and approve alternative procedures or standards for an operator of a passenger terminal to use instead of any procedure or standard required by this part if—

(1) Compliance with the one required is economically or physically impracticable;

(2) The alternative provides an equivalent level of security; and

(3) The operator submits a written request for the alternative, which contains sufficient information to establish, to the satisfaction of the COTP, that the alternative provides an equivalent level of security.

(b) The COTP will approve or disapprove the request, in writing, within 30 days of receipt of the written request.

Subpart B—Security Program

§ 128.200 General.

(a) Each operator of a passenger terminal shall implement for the terminal a security program that—

(1) Provides for the safety of persons and property in the terminal and aboard each passenger vessel subject to Part 120 of this chapter moored at the terminal, against acts of criminal violence and piracy;

(2) Prevents or deters the carriage aboard any such vessel moored at the terminal of any prohibited weapon, incendiary, or explosive on or about any person or within his or her personal articles or baggage, or the carriage of any prohibited weapon, incendiary, or explosive in stowed baggage, cargo, or stores;

(3) Prevents or deters unauthorized access to any such vessel and to restricted areas in the terminal;

(4) Takes into account both the current assessment of the likely threat of an unlawful act against the terminal, the vessel, or persons on the terminal or vessel, and the existing local circumstances;

(5) Designates, by name, a terminal security officer for the terminal;

(6) Provides for the evaluation of all security personnel of the terminal, before hiring, to determine suitability for employment;

(7) Provides for coordination with vessel security while any passenger vessel subject to Part 120 of this chapter is moored at the terminal; and

(8) Includes the plans, procedures, and equipment required by Subparts B and C of this part.

(b) Each operator of a passenger terminal shall, where practicable, work with the operator of each passenger vessel subject to Part 120 of this chapter to provide for the security of passengers, the terminal, and the vessel. The terminal, however, need not duplicate any provisions of this part fulfilled by the vessel.

§ 128.210 Restricted areas.

(a) Each operator of a passenger terminal shall designate all points of access to the boarding area for passenger vessels subject to Part 120 of this chapter and the following areas of the terminal "restricted areas":

(1) The boarding area for passengers adjacent to where such vessels moor, inside the security barriers and screening points.

(2) Areas for the handling and storage of baggage and cargo.

(3) Areas used to store weapons.

(4) Control rooms for security alarms and monitoring devices.

(5) Other areas, determined by the operator, to which access must be restricted to maintain the security of the terminal and passenger vessels moored at the terminal.

(b) Each restricted area must be appropriately secured, with access limited to authorized personnel.

(c) Each restricted area must be distinctly marked with a placard, mounted at eye level, that is at least 20 centimeters (8 in) high by 30 centimeters (12 in) wide with the words "RESTRICTED AREA—AUTHORIZED PERSONNEL ONLY" in red letters, at least 5 centimeters (2 in) high, on a white background.

(d) Each restricted area, other than the boarding area for passengers, must be equipped with an intrusion detection system that activates an audible alarm in accordance with § 128.420(a).

(e) Each restricted area and its intrusion detection system must be designated in the plan required by § 128.300.

§ 128.20 Terminal security officer.

(a) Each operator of a passenger terminal shall designate a terminal security officer for the terminal.

(b) This officer shall be responsible for—

(1) Conducting, amending, and updating the survey required by § 128.310;

(2) Evaluating security personnel of the terminal for suitability before employment;

(3) Instituting, monitoring, and recording training for employees of the terminal relative to security;

(4) Conducting regular inspections of the terminal;

(5) Proposing modifications to the plan required by § 128.300 to correct its deficiencies and satisfy the security requirements of the terminal;

(6) Encouraging vigilance, as well as general awareness of security, at the terminal;

(7) Reporting all occurrences or suspected occurrences of unlawful acts and related activities in accordance with § 128.250; and

(8) Coordinating implementation of the plan required by § 128.300 with the ship security officer of each vessel that embarks or disembarks passengers at the terminal.

§ 128.230 Training.

(a) Training for security at each passenger terminal is the responsibility of the operator and the terminal security officer of the terminal.

(b) This training must be provided to all security personnel of the terminal and must emphasize measures to take when advised by the COTP of an increased threat to the passenger terminal, a passenger vessel subject to Part 120 of this chapter moored at the terminal, or persons on the vessel or terminal.

(c) Subjects for training must include, but need not be limited to—

(1) Communications;

(2) Control of access;

(3) Patrol;

(4) Response to emergencies;

(5) Reporting;

(6) Characteristics and behavior of persons who may commit unlawful acts;

(7) Review of security standard operating procedures (SSOPs) for the terminal; and

(8) Support from the vessel relative to security;

(d) A record of the date and kind of training for security at the terminal provided to each employee of the terminal receiving training must stay at the terminal for the duration of the employee's employment plus six months. The operator shall make all such records available to the COTP upon request.

§ 128.240 Coordination with vessel security.

(a) Before a passenger vessel subject to Part 120 of this chapter embarks or disembarks passengers at a passenger terminal, the operator of the terminal shall, where practicable, work with the operator of the vessel, to provide security for the passengers and the terminal. The operator of the terminal need not duplicate any provisions of this part fulfilled by the operator of the vessel.

(b) The operator of the terminal shall—

(1) Agree as far as possible, in writing, with the operator of the vessel which responsibilities of the vessel will fulfill and which the terminal will;

(2) Establish communications with the vessel immediately after mooring;

(3) Obtain from the vessel a list of passengers and a list of all scheduled deliveries and services to the vessel; and

(4) Obtain a copy of the ship security plan.

§ 128.250 Reporting of unlawful acts and related activities.

(a) Any security personnel of the terminal having knowledge of an unlawful act, a suspicious activity, a breach of security, or a threat against the passenger terminal or against a passenger vessel subject to Part 120 of this chapter destined for or moored at the terminal, shall notify the operator or the terminal security officer of the terminal, or another representative of the terminal operator. If none of these can be notified, the person shall notify the COTP.

(b) The operator of the terminal or the operator's representative shall report each unlawful act, breach of security, or threat of an unlawful act, against the terminal, a passenger vessel subject to Part 120 of this chapter destined for or moored at that terminal, or persons on the terminal or vessel, to the COTP, to the local office of the Federal Bureau of Investigation (FBI) and to the local police agency having jurisdiction over the terminal.

(c) Each report of such an activity must include, as applicable—

(1) The terminal's name;

(2) The terminal's address;

(3) The name of the terminal security officer;

(4) If any such vessel is moored at tne terminal, the names of the vessel and its master;

(5) An account of the incident;

(6) The date, time, and place of the incident;

(7) The number of alleged offenders;

(8) The method used to introduce any prohibited weapon, incendiary, or explosive into the terminal;

(9) A description of any weapon, incendiary, or explosive involved;

(10) A description of how any weapon, incendiary, or explosive involved was concealed and used;

(11) A description of how security was breached; and

(12) A statement of what measures have been taken or will be taken to prevent another such incident.

(d) Use of the form "Report on an Unlawful Act", contained in the "Measures to Prevent Unlawful Acts Against Passengers and Crews on Board Ships" published by the International Maritime Organization in 1986, is encouraged.

(e) Each report must stay on file with the plan required by § 128.300 for a period of two years. All reports shall be used by the person preparing the next survey required by § 128.310.

Subpart C—Terminal Security Plan and Procedures

§ 128.300 Plan.

(a) Each operator of a passenger terminal shall develop and maintain, in writing, a terminal security plan that—

(1) Describes the program required by § 128.200; and

(2) Includes the survey required by § 128.310, the bill required by § 128.330, and the SSOPs required by § 128.340.

(b) The operator shall amend the plan to address any known deficiencies and satisfy the security requirements of the terminal each time the survey is updated under § 128.310(b); and

(c) The plan must provide for the security of passengers, of members of crews of passenger vessels subject to Part 120 of this chapter, and of employees of the terminal by establishing procedures to—

(1) Deter unauthorized access to restricted areas on the terminal or to any such vessel moored at the terminal;

(2) Deter the introduction of prohibited weapons, incendiaries, and explosives into restricted areas in the terminal or onto any such vessel moored at the terminal;

(3) Encourage vigilance, as well as general awareness of security, at the terminal;

(4) Provide adequate training to employees of the terminal for security at the terminal;

(5) Coordinate responsibilities for security with the operator of each such vessel; and

(6) Provide information to employees of the terminal and law enforcement personnel, in case of an incident affecting security.

§ 128.305 Plan: letter of adequacy.

(a) Each operator of a passenger terminal shall submit the terminal security plan required by § 128.300 to the COTP for review before [*Insert date 90 days after date of publication of the final rule in the* **Federal Register**], or at least 60 days before transferring passengers to or from a vessel subject to part 120 of this chapter, whichever is later.

(b) Within 30 days after receipt of a proposed terminal security plan, the COTP will issue to the operator either a letter of adequacy certifying that the terminal security plan adequately addresses the requirements of this part or a notice of deficiencies in the plan relative to the requirements of this part.

(c) Within 30 days after receipt of a notice of deficiencies, the operator may either submit a modified terminal security plan or submit an appeal of the notice of deficiencies to the Commandant via the COTP. The COTP will forward the appeal, with an endorsement containing the COTP's views and recommendations, to the Commandant. The Chief, Office of Marine Safety, Security and Environmental Protection will review the appeal. The decision of the Chief, Office of Marine Safety, Security and Environmental Protection is a final agency action.

(d) The COTP may void the letter of adequacy if the operator—

(1) Amends the terminal security plan without following the procedures in § 120.307;

(2) Fails to amend the terminal security plan when required by the COTP; or

(3) Fails to update the terminal security plan as required by § 120.300(d).

(e) No passenger terminal shall transfer passengers to or from a passenger vessel subject to part 120 of this chapter after [*Insert date 120 days after date of publication of the final rule in the* **Federal Register**] unless it has a valid letter of adequacy for its terminal security plan or an appeal under paragraph (c) of this section is pending.

§ 128.307 Plan: amendment.

(a) Amendments to update the terminal security plan may be initiated by the operator of a passenger terminal or directed by the COTP.

(b) If initiated by the operator of a passenger terminal, each proposed amendment to the terminal security plan, including changes to the enclosures required by § 128.300(a), must be submitted to the COTP for review at least 30 days before the proposed effective date, unless a shorter period is allowed by the COTP.

(c) The COTP may direct the operator of a passenger terminal to amend the terminal security plan if it is determined that implementation of the plan is not providing effective security or there is an increased threat affecting the terminal or a vessel subject to part 120 of this chapter moored at the terminal. Except in an emergency, a written notice of matters to be addressed will be issued to the operator and the operator will be provided at least 60 days to submit proposed amendments.

(d) Within 15 days after receipt of a proposed amendment, the COTP will issue a letter to the operator either accepting the proposed amendment or addressing why the proposed amendment does not adequately meet the requirements of this part.

(e) A notice to amend a terminal security plan or a rejection of a proposed amendment by the COTP may be appealed within 30 days of receipt as provided in § 128.305.

(f) If there is an emergency or other circumstance that makes the procedures in paragraphs (c), (d) and (e) of this section impractical, the COTP may order the operator of a passenger terminal to implement increased security measures immediately. The order will incorporate a statement of the reasons for the emergency action. Orders issued by the COTP may be appealed as provided in § 160.7 of this chapter.

§ 128.310 Survey: general.

(a) Each operator of a passenger terminal shall conduct an initial, comprehensive terminal security survey before preparing the plan required by § 128.300.

(b) The operator shall update the survey at least every two years and whenever there is a notification from the COTP of an increased threat to the terminal or a passenger vessel subject to part 120 of this chapter which moors at the terminal.

(c) The operator shall update the survey and notify the COTP within 10 days of a—

(1) Change in the description of the terminal required by § 128.320(e); or

(2) Change in the owner, operator, or terminal security officer of the terminal or in the operator's representative.

(d) The survey must identify potential threats of unlawful acts against the terminal, against a passenger vessel subject to Part 120 of this chapter moored to the terminal, or against persons on the terminal or vessel. The survey must also determine the vulnerability of the terminal to those threats.

(e) The operator shall ensure that distribution, disclosure, and availability of information contained in the survey is confined to those persons with an operational need to know. These persons include the operator, the terminal manager, the terminal security officer, the ship security officer, and appropriate law enforcement officials. When not under supervision, copies of the survey under the control of the operator must be kept in a locked safe or other secure container, to prevent disclosure to unauthorized persons.

§ 128.320 Survey: contents.

The terminal security required by § 128.310 must include—

(a) The date of the survey;

(b) The date of the last such survey;

(c) The names of the owner and operator of the passenger terminal;

(d) The name, business address, and telephone number of the terminal security officer;

(e) A description of the terminal that includes—

(1) A schematic showing the general layout of the terminal;

(2) A schematic showing the place and purpose of each actual and

potential point of access to the boarding area for passengers, including each window, door, gate, manhole, storm drain, ditch, and fence;

(3) A schematic or list indicating the kind, place, area of illumination, and intensity of all security lighting;

(4) A schematic or list indicating the location of each restricted area designated under § 128.210 and each means of securing it;

(5) A schematic or list indicating the kind and place of emergency and standby equipment for firefighting, lighting, communications, and security; and

(6) A list of all firearms and ammunition on the terminal, other than those in secure baggage, indicating the persons to whom they are issued or the locations in which they are stored;

(f) An account of the normal staffing of the terminal that includes—

(1) The number of security personnel employed; and

(2) The number of other employees normally at the terminal when a vessel subject to part 120 of this chapter embarks or disembarks passengers;

(g) A description of each vessel subject to Part 120 of this chapter that embarks or disembarks passengers at the terminal which includes the—

(1) Name and call sign;

(2) Flag of registry;

(3) Length overall;

(4) Draft forward and aft under full load;

(5) Gross tonnage; and

(6) Number of passenger berths aboard;

(h) A list of each SSOP in effect;

(i) Security equipment in use, including that for inspection, control, monitoring, firefighting, and communication; alarms; lighting; intrusion detection systems; and barriers;

(j) Information provided by the COTP on current threats to the security of the terminal, a vessel subject to Part 120 of this chapter moored at the terminal, or persons on the terminal or vessel;

(k) An assessment of the vulnerability of the terminal to each threat identified in paragraph (j) of this section;

(l) A list of measures and procedures in the terminal security plan to counter each threat identified in paragraph (j) of this section; and

(m) A description of the ability of the screening points of the terminal to detect prohibited weapons, incendiaries, and explosives on persons, or in personal articles, baggage, cargo, and stores.

§ 128.330 Bill.

(a) Each operator of a passenger terminal shall develop a terminal security bill.

(b) The bill must set forth—

(1) The name and job title of each employee of the terminal assigned a duty relative to security;

(2) Each duty relative to security assigned; and

(3) The station at which each duty will be performed.

(c) A copy of the bill must be available to the terminal security officer and provided to each employee assigned a security related duty.

(d) The bill must constitute part of the plan required by § 128.300 and must be reviewed and, if necessary, updated each time the survey is updated under § 128.310 (b) and (c).

§ 128.340 Security standard operating procedures.

(a) Each operator of a passenger terminal shall develop security standard operating procedures (SSOPs) that detail the number and duties of all employees of the terminal required for each activity relative to security on the terminal. Each SSOP must be reviewed and, if necessary, updated each time the survey is updated under § 128.310 (b) and (c).

(b) The operator shall determine the number and duties of employees of the terminal required for normal operations and for an increased level of security, based on information in the survey and on the advice of the terminal security officer.

(c) Each SSOP must differentiate as far as it can between actions appropriate for routine situations, increased security levels, and emergency situations.

(d) Unless otherwise directed by the COTP, the operator shall develop an SSOP for—

(1) Watches and patrols conducted while a passenger vessel subject to Part 120 of this chapter is moored at the terminal and while one is not;

(2) Tracking the entry and exit of vendors, repair personnel, dock workers, and visitors entering the boarding area for passenger vessels subject to Part 120 of this chapter;

(3) Inspection, control, and monitoring of persons, personal articles, and baggage destined for a passenger vessel subject to Part 120 of this chapter moored at the terminal;

(4) Inspection, control, and monitoring of cargo, stores, and stowed baggage destined for a passenger vessel subject to Part 120 of this chapter moored at the terminal;

(5) Communications for emergency and routine situations;

(6) Response to suspicious packages, baggage, or cargo;

(7) Response to prohibited weapons found or suspected;

(8) Response to fire or explosion on the terminal or aboard a passenger vessel subject to Part 120 of this chapter moored to it;

(9) Response to an incendiary or explosive found or suspected;

(10) Response to an unauthorized armed person detected on the terminal;

(11) Response to a breach of security or to suspicious activity on, or near, the terminal;

(12) Procedure for reporting a breach of security or a suspicious activity;

(13) Response to alarms;

(14) Use of security equipment, including any intrusion detection or surveillance systems installed on the terminal;

(15) Issuance of, use of, and accountability for identification cards; and

(16) Issuance of, use of, and accountability for keys.

(e) An SSOP must address watches when—

(1) Passengers or baggage are being assembled, processed, embarked, or disembarked at the terminal, for:

(i) Each boarding area and each point of access to a restricted area.

(ii) Each screening point for passengers, baggage, cargo, or stores.

(iii) The communications center.

(iv) Control rooms where security alarms and monitoring-devices are monitored; and

(2) No passengers or baggage are being assembled, processed, embarked, or disembarked at the terminal, for:

(i) Each point of access to a restricted area.

(ii) The communications center.

(iii) Control rooms where security alarms and monitoring devices are monitored.

(f) The SSOP respecting issuance of, use of, and accountability for keys must include—

(1) A record of each person issued a key to a restricted area;

(2) An inventory of keys to restricted areas that are not issued to employees;

(3) Designation of a secure container for storing keys to restricted areas that are not issued to employees; and

(4) Steps to take if a key to a restricted area is lost or missing.

§ 128.350 Identification.

(a) Each operator of a passenger terminal shall establish a system of identification and control of personnel for the terminal that—

(1) Designates, in writing, each category of persons with a valid need to be in the boarding area for passengers and each person with a valid need to be in other restricted areas on the terminal;

(2) Allows access only to persons designated in accordance with paragraph (a)(1) of this section; and

(3) Establishes procedures meeting the requirements in paragraphs (b), (c) and (d) of this section for identifying each person authorized access to a restricted area in the terminal.

(b) Each operator of a passenger terminal shall issue an identification card to each employee of the terminal. The terminal security officer shall maintain a record of each identification card issued and of each blank one at the terminal, by number. Unissued identification cards must be kept in a locked safe or other secure container accessible only to the manager of the terminal, the terminal security officer, and other designated employees. The identification card must—

(1) Be made of a durable material that can be imprinted with appropriate identifying information;

(2) Include a color photograph, approximately 3 centimeters (1¼ in) by 3.6 centimeters (1½ in);

(3) Be laminated on both sides, with a clear plastic material that resists aging, discoloration, and separation; and

(4) Contain the following:

(i) Cardholder's name.

(ii) Cardholder's date of birth.

(iii) Cardholder's height.

(iv) Cardholder's weight.

(v) Color of cardholder's hair.

(vi) Color of cardholder's eyes.

(vii) A unique number.

(viii) Name of the terminal or company that employs cardholder.

(ix) An expiration date, not later than two years after the date of issue.

(c) The operator shall provide for each contractor, vendor, and other visitor authorized access to a restricted area a temporary identification card that—

(1) Contains a unique number;

(2) Is issued upon cardholder's arriving at the terminal and retrieved upon cardholder's leaving the terminal; and

(3) Is signed for by the cardholder or, for children, a responsible adult, indicating their reason for entering the restricted area; and

(4) Is strictly accounted for, by number.

(d) Each operator of a passenger terminal shall establish a procedure for identifying each passenger each time the passenger enters the boarding area. The procedure must require an identification document containing a photograph of the holder to identify each passenger over the age of 10 and shall compare the name of the person so identified against the official passenger list of the vessel. The identification document may be one provided by the passenger such as a driver's license, passport, or armed forces identification card, or one provided by the operator of the passenger vessel. Passengers presenting an identification document containing a photograph of the holder issued by the operator of the passenger vessel that is unique to the voyage need not be verified against the official passenger list of the vessel.

§ 128.360 Screening.

(a) Each personal article and each piece of baggage brought into the boarding area for passenger vessels subject to Part 120 of this chapter must undergo a thorough check. The check may take the form of manual search, electronic screening, or equivalent means acceptable to the COTP.

(b) Each person entering the boarding area shall undergo a metal detector check.

(c) The checks required by paragraphs (a) and (b) of this section apply to each entry of the boarding area.

(d) One or more guards shall watch each screening point, whenever it is accessible and passengers or baggage are being assembled, processed, embarked, or disembarked at the terminal.

(e) A written notice, legible in the area shoreside of the screening station, must be posted to advise persons entering the boarding area that security checks are being conducted. The notice must be written in English except that, where a language other than English is widespread, it must be written in both English and the other language.

(f) No person refusing to submit to a security check at a point of access may enter the boarding area. Each person denied entry for refusing to submit to a security check shall, if possible, be identified and reported to appropriate authorities.

(g) Before being placed aboard a passenger vessel subject to Part 120 of this chapter—

(1) All cargo and stores, and all baggage destined for a restricted area, must undergo a brief inspection; and

(2) A percentage of such cargo, stores, and baggage, specified by the Commandant, shall be selected at random and thoroughly checked by manual search, electronic screening, or equivalent means acceptable to the COTP.

(h) Each piece of baggage must be marked, labeled, tagged, or otherwise identified as belonging to a particular passenger and must be compared against the official passenger list of the vessel. No unidentified baggage may enter the boarding area.

(i) Baggage destined for a restricted area, cargo, and stores must undergo inspection or thorough check immediately before delivery to the vessel, unless they are stowed in a restricted area immediately after a prior inspection or check and held there until delivery.

(j) Baggage, cargo, and stores must be delivered directly to the vessel from a restricted area or inspection area.

(k) Suppliers of stores shall make deliveries to an area physically separated from the boarding area. Each delivery must be compared against a list of expected deliveries provided by the vessel and must be accompanied by a clearly itemized manifest that accurately sets forth the kinds and amount of stores delivered.

§ 128.370 Communications.

(a) The operator of each passenger terminal shall ensure that security personnel of the terminal have a means of continuous communications, such as radio, telephone, or intercom, that enables them to communicate with the terminal security officer, the communications center, or security personnel of the passenger vessel from their duty stations.

(b) Roving patrols shall be equipped with radios, cellular telephones, or other portable means of communication.

(c) Communications shall be established with each passenger vessel subject to Part 120 of this chapter that docks at the terminal, immediately after mooring.

(d) A distress signal peculiar to security, indicating a security alert, must be established that is—

(1) Part of the SSOP for communications;

(2) Known by each employee of the terminal assigned security duties; and

(3) Changed from time to time but not less often than once every three months.

(e) The SSOP for communications must specify the kind of communications to use for a breach of security, an unlawful act, or other emergency.

Subpart D—Equipment

§ 128.410 Lighting.

(a) Each operator of a passenger terminal shall provide security lighting between sunset and sunrise that—

(1) Illuminates each exterior door, gate, or other point of access to the boarding area for passenger vessels subject to Part 120 of this chapter; and

(2) Illuminates each fence, pier, wharf, or other area that could be used to gain access to the boarding area.

(b) The lighting must provide a minimum average illumination on a horizontal plane 1 meter (3 ft) above the walking surface that is at least:

(1) Eleven lux (1 foot-candle) for each exterior door, gate, or other exterior point of access to the boarding area.

(2) Five and one-half lux (0.5 foot candle) for each fence, pier, wharf, or other place that could be used to gain access to the boarding area.

(c) All external lighting must be located or shielded so that it will not be confused with an aid to navigation and will not interfere with safe navigation on the adjacent waterways.

§ 128.420 Alarms.

(a) Each intrusion detection system required by § 128.210(e) must activate an alarm when it detects an intrusion. The alarm must sound where the detector is and at an attended central site.

(b) Alarms may also be used for other security purposes, such as by alerting security personnel or other employees of the terminal to breaches of security or unlawful acts.

§ 128.430 Screening.

The screening systems for persons, personal articles, baggage, cargo, and stores must be capable of detecting prohibited weapons, incendiaries, and explosives in accordance with the terminal security plan. X-ray systems must be designed and used in accordance with ASTM F–792–82.

§ 128.435 Barriers.

(a) The boundary between restricted areas and unrestricted areas must be clearly defined by walls, fences, or other security barriers.

(b) Security barriers must be designed, located, and constructed to—

(1) Delineate the area protected;

(2) Create a physical and psychological deterrent to persons attempting unauthorized entry;

(3) Enable security personnel to detect intruders; and

(4) Have a minimum number of openings that provide readily identifiable places for the controlled entry of persons and vehicles into the restricted area.

(c) Openings in security barriers must be secured when not watched by security personnel.

(d) Security fences and walls must be at least 2.5 meters (8 ft) high, including top guards. Each security fence or wall must have a top guard with barbed wire, razor ribbon, or similar material angled away from the protected site and upward at about a 45-degree angle.

(e) Security barriers in or near roadways must be reinforced to deter penetration by motor vehicles.

(f) Security barriers must be kept clear of trees, bushes, and other obstructions for at least 6 meters (20 ft) on each side.

(g) Buildings and natural barriers such as water, ravines, or escarpments may constitute part of the control boundary, but they must be augmented by safeguards such as fences, walls, patrols, surveillance, or intrusion detection systems, if necessary.

§ 128.440 Maintenance.

(a) Security equipment must be checked and maintained to keep it in good working condition.

(b) Communications equipment must be checked on each watch.

(c) Doors, gates, locks, alarms, and intrusion detection systems must be checked each day.

(d) Interior and exterior security lighting must be checked for proper operation when activated each night.

(e) All security equipment not used each day must be checked each week.

(f) Any defective or missing security equipment must be reported immediately to the terminal security officer of the passenger terminal.

§ 128.450 Records.

Each operator of a passenger terminal shall keep a record of each check required under § 128.440 and shall retain each record for at least 30 days after the date of the check.

Dated: March 9, 1994.

J.W. Kime,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 94–6812 Filed 3–24–94; 8:45 am]

BILLING CODE 4910–14–M

federal register

Friday
March 25, 1994

Part IV

Department of Education

34 CFR Part 219

Assistance for School Expenditures and Construction in Cases of Certain Disasters; Final Rule and Notice

DEPARTMENT OF EDUCATION

34 CFR Part 219

RIN 1810–AA71

Assistance for School Expenditures and Construction in Cases of Certain Disasters

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Impact Aid disaster assistance program. These final regulations are needed to extend the deadline for local educational agencies (LEAs) affected by a specific Presidentially-declared disaster to apply for funds, through their State educational agencies (SEAs), beyond the usual 90-day period after publication of a Presidential disaster declaration or amendment to a declaration.

EFFECTIVE DATE: These regulations take effect either May 9, 1994 or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Frank Delia, Impact Aid Programs, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6244. Telephone: (202) 260–3893. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5516.

SUPPLEMENTARY INFORMATION: Under the current statutory and regulatory provisions of Public Law 81–874 (the Impact Aid statute), the Secretary provides section 7(a) assistance to eligible LEAs that have increased operating costs or reduced revenue as a result of a Presidentially-declared disaster. Under § 219.21 of the current regulations, an LEA must submit its application for section 7(a) disaster assistance to its SEA and ensure that the SEA certifies and transmits the application to the Secretary of Education. The application must be transmitted by the SEA on or before 90 days after the publication of a notice in the **Federal Register** that the President has declared a major disaster and that the county in which the LEA is located is eligible for public assistance.

In certain disasters, such as the midwestern floods of 1993, a number of areas are affected over a span of several weeks or months, with multiple counties in several States being declared eligible for public assistance at different times. This results in multiple declarations of disaster, multiple dates for the submission of applications, and possible confusion about the applicable deadlines, even within a given State. Consequently, certain LEAs and SEAs may be unable to determine accurately the appropriate deadline and fail to file timely applications with the Department.

In recognition of the possible confusion that disasters of this type may cause, the Secretary amends the regulations to allow for additional time for filing or other ways to set the deadlines in particular disasters. All other statutory and regulatory criteria regarding section 7(a) disaster assistance remain in effect.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these final regulations are small public and private agencies receiving Federal funds under these programs. However, the regulations will not have significant economic impact on the small entities affected because the regulations will not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations make only procedural changes that grant greater flexibility in establishing application deadlines.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), proposed rulemaking is not required. Moreover, the Secretary has determined under 5 U.S.C. 553(b)(B) that proposed rulemaking on these amended regulations is unnecessary and contrary to the public interest.

Assessment of Educational Impact

The Secretary has determined that the regulations in this document would not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 219

Administrative practice and procedure, Disaster assistance, Education, State-administered programs.

(Catalog of Federal Domestic Assistance Number 84.041)

Dated: March 16, 1994.

Thomas W. Payzant,

Assistant Secretary, Elementary and Secondary Education.

The Secretary amends part 219 of title 34 of the Code of Federal Regulations as follows:

PART 219—ASSISTANCE FOR SCHOOL EXPENDITURES AND CONSTRUCTION IN CASES OF CERTAIN DISASTERS

1. The authority citation for part 219 continues to read as follows:

Authority: 20 U.S.C. 241–6 and 646, unless otherwise noted.

2. In § 219.21, paragraph (b) is amended by adding a sentence at the end to read as follows:

§ 219.21 Application procedure.

* * * * *

(b) * * * The 90-day requirement may be extended by the Secretary, under unusual circumstances, through the publication of a notice in the **Federal Register.**

* * * * *

[FR Doc. 94–6904 Filed 3–24–94; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Assistance for School Expenditures and Construction in Cases of Certain Disasters

AGENCY: Department of Education.

ACTION: Notice to extend deadline for applications for disaster assistance from local educational agencies affected by the midwestern floods of 1993.

SUMMARY: The Secretary of Education announces the extension of the deadline for local educational agencies (LEAs) to apply for assistance needed as a result of the midwestern floods of 1993 in the States of Iowa, Illinois, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin. These LEAs must be located in a county identified in the Presidential Disaster Declarations and amendments as eligible for public assistance as a result of the midwestern floods of 1993.

To apply, LEAs must submit applications, through their State educational agencies, for disaster assistance under section 7(a) of Public Law 81–874 (the Impact Aid statute) to cover the costs of increased operating expenses or reduced revenue.

DATES: The new deadline for applications from all LEAs located in eligible counties will be May 24, 1994.

FOR FURTHER INFORMATION CONTACT: Frank Delia, Impact Aid Programs, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6244. Telephone: (202) 260–3893. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5516.

SUPPLEMENTARY INFORMATION: Under the current statutory and regulatory provisions of Public Law 81–874 (the Impact Aid statute), the Secretary provides section 7(a) assistance to eligible LEAs that have increased costs or reduced revenue as a result of a Presidentially-declared disaster. Under § 219.21 of the current regulations, an LEA must submit its application for section 7(a) disaster assistance to its State educational agency (SEA) and ensure that the SEA certifies and transmits the application to the Secretary of Education on a timely basis. To be timely, the application must be transmitted by the SEA on or before 90 days after the publication of a notice in the **Federal Register** that the President has declared a major disaster and that the county in which the LEA is located is eligible for public assistance. However, in an amendment to the regulatory provision in § 219.21, published in this same issue of the **Federal Register**, the Secretary is authorized to extend the 90-day requirement, under unusual circumstances, through the publication of a notice in the **Federal Register** extending the deadline.

Since the midwestern floods of 1993 affected a large part of the Midwest over a span of several months, 502 counties in nine States were declared eligible for public assistance with application deadlines ranging from September 30, 1993 to February 3, 1994. The regulatory closing date for applications for section 7(a) assistance is 90 days from the publication date of the Presidential declaration or amendment. The nature of this particular disaster resulted in numerous closing dates and confusion as to applicable deadlines, even within a given State. Consequently, certain LEAs and SEAs failed to file timely applications with the Department.

In recognition of the unusual circumstances of this specific disaster and the resultant confusion with regard to the application deadlines, the Secretary extends the deadline for all applications for section 7(a) assistance from LEAs covered by the Presidential disaster declarations that pertain to these floods. All other statutory and regulatory criteria regarding section 7(a) disaster assistance remain in effect.

LEAs that have already filed certified applications through their appropriate State representative need not apply again. Any other LEAs incurring damage from the floods in the affected eligible counties are encouraged to consider applying. These LEAs should be aware that in order to be eligible, an LEA's minimum need for assistance must be at least $10,000 or five percent of the LEA's operating costs for the fiscal year preceding the disaster, whichever is less. Further, new applicants must contact their State representative regarding eligibility and application forms. Applications must be submitted to their State representative for certification and the application must be forwarded to this Department on or before the new closing date specified above. The designated representative for each of the eligible States is as follows:

Pam Roth, State Aid Consultant, Nebraska Department of Education, 301 Centennial Mall South, P.O. Box 94987, Lincoln, Nebraska 68509–4987, Phone: (402) 471–2486, FAX: (402) 471–0117.

Maxine Schochenmaier, Budget Analyst, 700 DECA Finance Management, 700 Governors Drive, Pierre, South Dakota 57501, Phone: (605) 773–4737, FAX: (605) 773–6139.

Dale Dennis, Deputy Commissioner of Education, Kansas State Board of Education, 120 East 10th Street, Topeka, Kansas 66612–1182, Phone: (913) 296–3871, FAX: (913) 296–7933.

Tom Decker, Director, School Finance and Organization, Department of Public Instruction, North Dakota State Capitol, 600 East Boulevard, Bismarck, North Dakota 58505, Phone: (701) 224–2267, FAX: (701) 224–2461.

Kerry Suzuki, Education Finance Specialist, Minnesota Department of Education, 550 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101, Phone: (612) 296–8640, FAX: (612) 297–7720.

David Carson, School Consultant, Department of Public Instruction, P.O. Box 7841, Madison, Wisconsin 53707–7841, Phone: (608) 266–9401, FAX: (608) 267–1052.

Gary Jones, Director of Administrative Services, Department of Elementary and Secondary Education, P.O. Box 480, Jefferson City, Missouri 65102, Phone: (314) 751–2586, FAX: (314) 526–4404.

C. Milton Wilson, Consultant, School Facilities, Iowa Department of Education, Grimes State Office Building, Des Moines, Iowa 50319–1046, Phone: (515) 281–4743, FAX: (515) 281–6548.

Gary Ey, Assistant Superintendent, Department of School Finance, Illinois State Board of Education, 100 North First Street—3rd Floor, Springfield, Illinois 62777, Phone: (217) 782–2098, FAX: (217) 782–3910.

Authority: 20 U.S.C. 241–1, 20 U.S.C. 242(b).

Dated: March 17, 1994.

Thomas W. Payzant,

Assistant Secretary, Elementary and Secondary Education.

[FR Doc. 94–6905 Filed 3–24–94; 8:45 am]

BILLING CODE 4000–01–P–M

federal register

Friday
March 25, 1994

Part V

Department of the Interior

Bureau of Indian Affairs

Fiscal Year 1994 Indian Child Welfare Act Grant Program; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Fiscal Year (FY) 1994 Indian Child Welfare Act (ICWA) Grant Program, Availability of Title II ICWA Funds for Federally Recognized Indian Tribes

AGENCY: Bureau of Indian Affairs.

ACTION: Notice of Availability of Grant Funds.

SUMMARY: Title II of the Indian Child Welfare Act (ICWA) (25 U.S.C. 1931) makes grant funds available to federally recognized Indian tribes from the Bureau of Indian Affairs (BIA), Department of the Interior, for the purpose of improving child welfare services to Indian children and families.

DATES: The closing date for receipt of applications for this program is May 30, 1994, for all tribal government applicants.

ADDRESSES: Applications must be delivered or sent to the appropriate Bureau of Indian Affairs' area or agency office in whose service area jurisdiction the tribe is located. The names and addresses of the BIA's twelve Area Offices are listed in Part IV of this announcement.

FOR FURTHER INFORMATION CONTACT: The Bureau of Indian Affairs' area or agency office nearest to the applicant, or Betty Tippeconnie, BIA Division of Social Services, Mail Stop 310–SIB, 1849 C Street, NW., Washington, DC 20240. Telephone 202/208–2721.

SUPPLEMENTARY INFORMATION: Title II of the Indian Child Welfare Act, Public Law 95–608, authorizes the utilization of funds for grants to Indian tribes. This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8. The BIA published in the January 13, 1994, **Federal Register**, Vol. 59. No. 9, regulations revising 25 CFR part 23, the rules that govern the Title II ICWA grant program, and convert the previous competitive ICWA grant award process to a noncompetitive award system for eligible federally recognized Indian tribes. The Assistant Secretary—Indian Affairs hereby announces procedures necessary for eligible Indian tribes to apply for the FY 1994 Title II ICWA grant funds which shall be awarded noncompetitively under the revised 25 CFR part 23. The revised rules became effective on February 14, 1994. Copies of the revised 25 CFR part 23 ICWA grant regulations may be obtained from the Area Social Workers listed in Part IV of this announcement.

Comprehensive, three-year developmental tribal government applications for ICWA grant programs will be accepted for the amount of funds for which the tribe is eligible. Applications received under this announcement must comply with all applicable requirements and criteria specified in the revised 25 CFR part 23. It is imperative that applicants carefully review all requirements detailed in this announcement relative to application contents, deadlines, contract support funds, and other special instructions.

It is incumbent upon the respective Area Director or Agency Superintendent to provide the necessary technical assistance within the 60-day timeframe specified in 25 CFR 23.21(b)(1) to ensure that all eligible tribes within the area's or agency's administrative jurisdiction access the amount of ICWA funds for which each is eligible. Should a tribe not apply to administer an ICWA program or should their ICWA application be disapproved, the ICWA funds available to the tribe may be reprogrammed to other Tribal Priority Allocation (TPA) program(s) with the approval of the affected tribe.

A total of $22,905,000 in FY 1994 ICWA funds will be available to Indian tribes nationwide for grants under Title II of the Indian Child Welfare Act.

Part I—General Information

A. Background

Section 201 of the Indian Child Welfare Act of 1978 (Public Law 95–608, 25 U.S.C. 1931) authorizes the Secretary to make grants to Indian tribes to establish and operate on-reservation Indian child and family service programs for the purpose of stabilizing and preventing the breakup of Indian families and, in particular, to ensure that the permanent removal of an Indian child from the custody of his/her Indian parent or custodian shall be an action of last resort; and to prepare and implement child welfare codes (25 U.S.C. 1902; 25 U.S.C. 1931).

It is the policy of the BIA to emphasize and facilitate the comprehensive design, development and implementation of Indian child and family service programs in coordination with other Federal, state, local, and tribal programs which strengthen and preserve Indian families and Indian tribes. Thus, tribes operating BIA contracted social services programs or related programs under the auspices of a tribal-state agreement are encouraged to design their ICWA programs/activities to integrate with or complement existing child and family service programs.

This announcement provides information on the FY 1994 ICWA grant application process for eligible Indian tribes, and initiates the noncompetitive distribution of ICWA grant funds to tribes. To access FY 1994 ICWA grant funds, all tribes, including those who have negotiated self-governance compact agreements, must submit a three-year (FY 1994–FY 1996) application and program plan. Once a tribe's application and program plan are approved by the respective Area Director or Agency Superintendent in accordance with 25 CFR 23.43, continued annual funding of the tribe's ICWA program for FY 1995 and FY 1996 will be contingent upon annual appropriations, receipt of a satisfactory program evaluation from the area's social services office for the previous year of operation, and submission of an annual budget and budget narrative justification statement in accordance with 25 CFR 23.23(b)(7). At the beginning of FY 1995 and thereafter, the distribution of ICWA grant funds to tribal governments will coincide with the Federal Government's fiscal year cycle. Thus, eligible Indian tribes will continuously access their recurring ICWA funds in the tribal priority allocation (TPA) part of the tribe's budget system.

B. Eligible Applicants

The governing body of any federally recognized Indian tribe or tribes may apply individually or as a consortium for a grant under this announcement. A consortium is created by an agreement or association between two or more eligible applicants. Under a consortium application, each eligible consortium applicant (tribe) must identify the amount of ICWA funds for which it is eligible. An applicant may not submit more than one application nor be the beneficiary of more than one grant under this grant announcement.

C. Purpose of Tribal Government Indian Child Welfare Act Grant Programs

The objective of every Indian child and family services program shall be to: Ensure that measures intended to prevent the breakup of Indian families are followed in child custody proceedings; ensure that the permanent removal of an Indian child from the custody of his/her Indian parent or Indian custodian shall be a last resort; comply with the ICWA out-of-home placement preferences when such placements are deemed necessary; and implement procedures and practices which reflect the unique values of Indian culture, and which promote the stability and security of Indian children,

Indian families and Indian communities.

Tribal ICWA programs funded pursuant to 25 U.S.C. 1931 are for the specific purposes delineated in the statute and may include the programs and activities listed at revised 25 CFR 23.22. These purposes are further defined in Public Law 95–608 (Section 201, 25 U.S.C. 1931). During FY 1994, first-time tribal government ICWA program applicants may expend a portion of their ICWA funds to plan, design, or develop a comprehensive, developmental tribal ICWA program.

Part II—Available Funds

In FY 1994, eligible federally recognized Indian tribes will apply for $22,905,000 in ICWA grant funds nationwide. However, no FY 1994 contract support funds are available for tribal government ICWA grant programs. Tribes must satisfy and comply with the application requirements specified at revised 25 CFR part 23 in order to access their share of ICWA funds. The ICWA grant funds will be awarded noncompetitively to eligible Indian tribes or consortiums of tribes with approved three-year (FY 1994–FY 1996) grant applications, and will be distributed through the tribe's/agency's tribal priority allocation budget process.

Under a consortium application, each eligible consortium applicant (tribe) must identify the amount of ICWA funds for which it is eligible in its own right. No additional funds will be awarded to consortium grants other than the combined total of the funding amounts for which each eligible consortium applicant (i.e., individual tribe) may apply. However, under no circumstances may any tribe or consortium of tribes or subgrantee receive ICWA grant funds greater than the maximum grant amount of $750,000, either through a direct grant or through subgranting arrangements with approved applicants. The $750,000 "cap" has been established to ensure that funds are available to maintain grants at adequate funding levels for all eligible tribes.

In addition to the 374 tribes awarded FY 1992/FY 1993 ICWA grants, a total of 160 more tribes will be eligible to receive grants under the noncompetitive tribal ICWA grant system being initiated in FY 1994.

Due to the overall number of eligible tribes, and in order to maintain the minimum grant amounts at an acceptable level, the "bonus" incentive available to consortiums in FY 1992/FY 1993 is being discontinued. By letter of December 24, 1991, the Assistant Secretary—Indian Affairs notified all tribes that, in the absence of regulations authorizing a conversion to a noncompetitive ICWA process, FY 1992 was a transitional year, and that the funding mechanisms implemented in FY 1992 might be changed when revised regulations became effective.

Title II of the Indian Child Welfare Act, at Section 201(b), clearly encourages tribes to seek funds from other sources to enhance the quality and scope of ICWA child and family services programs. Accordingly, Indian tribes are encouraged to maximize the effectiveness of ICWA funds by designing grant activities that integrate with or complement other Federal, state, local or tribal child and family service programs that may be available to serve their communities. ICWA grant funds may also be used as non-Federal matching shares under Social Security Act or any other Federal financial assistance programs which contribute to the purpose for which funds are authorized to be appropriated for use under the Indian Child Welfare Act.

No ICWA grant funds will be withheld at the Central Office for appeals related to a tribe's funding level; therefore, approved applications will be funded strictly on the availability of funds and in accordance with the funding amounts published in this grant announcement. The respective Area Director has final funding authority.

In the consultation meetings BIA held with Indian tribes on the matter of how available funds for ICWA grants should be allocated, it was determined that the allocation of funds should be made on the basis of each eligible tribe's service area population. In the table printed below, ICWA funding amounts are given for a series of service area population ranges. The individual tribal allocations of FY 1994 ICWA funds are based on estimated service area population figures that recently have been certified by each Area Director as being the most accurate population data available for tribes within his/her area's jurisdiction. Tribes may contact their area social worker to learn the amount of ICWA funds for which they are eligible to apply.

FY 1994 TITLE II ICWA FUNDING DISTRIBUTION PLAN FOR TRIBES

Service area population	Maximum grant amount
1–500	$29,446
501–1,500	45,000
1501–3,000	55,000
3,001–5,000	65,000
5,001–8,000	75,000
8,001–20,000	90,000
20,001–40,000	130,000
40,001–60,000	150,000
60,001–90,000	250,000
90,001–14,000	350,000
140,001–180,000	500,000
180,001–And over	750,000

Part III—Mandatory Tribal Government Application Contents

A. Statutory Authority

The BIA's Indian Child Welfare Act grants program is authorized by Title II of Public Law 95–608, the Indian Child Welfare Act (25 U.S.C. 1901 et seq., 25 CFR part 23). All grant applications submitted under this announcement shall comply with the tribal government application contents and requirements specified at 25 CFR 23.23. A consortium of two or more eligible Indian tribes may apply for a grant as a consortium, in which each component tribe will contribute the amount of funds for which it is eligible in its own right. Consortium applicants must identify the lead tribe that will be responsible for submitting the required grantee reports and for the general purposes of fulfilling and adhering to other grant administration requirements. All grantees, including all consortia of two or more Indian tribes, must comply with all general and uniform grant administration requirements addressed in 25 CFR part 23 and 25 CFR part 276.

B. Closing Date for Receipt of Applications for All Applicants

The closing date for receipt of applications under this program announcement is the close of business on May 30, 1994, for all applicants. All applications for Indian Child Welfare Act grants must be received by the appropriate BIA Area Director or Agency Superintendent, as specified in 25 CFR 23.21, at or before 5 p.m. or the official close of business for that office on the closing date of the application period. Hand-delivered applications will be accepted during normal work hours Monday through Friday. The names and addresses of all BIA area offices are listed in Part IV of this announcement.

It is reiterated that Area Directors and Agency Superintendents are responsible for providing the necessary technical assistance to ensure that all tribes under the area or agency's administrative

jurisdiction access the ICWA funds for which they are eligible.

C. Grant Review and Award Process

The appropriate Agency Superintendent or Area Director shall review and take the appropriate course of action on tribal government ICWA applications received in response to this announcement in accordance with the established requirements and timeframes in 25 CFR 23.21; 23.22; and 23.23 respectively. Grants shall be awarded and executed in accordance with 25 CFR 23.43 as expeditiously as possible.

Grantees must comply with all applicable Federal financial and program performance reporting requirements and the general and uniform grant administration requirements specified in 25 CFR parts 23 and 276. Failure to meet and comply with regulatory requirements may result in suspension, cancellation and/or termination of program funds.

D. Appeals

Appeals filed under revised 25 CFR 23.61 and 23.63 shall be filed in accordance with appeal procedures as set out in 25 CFR part 2. As previously stated herein, no tribal ICWA funds will be withheld at the Central Office for purposes of funding appeals.

A Notice of Appeal must be filed within 30 days of the appellant's receipt of the decision being appealed. The notice must be filed in the office of the official whose decision is being appealed. The date of filing is the date the notice of appeal is postmarked or the date it is personally delivered to the official's immediate office (25 CFR 2.9(a), 2.13(a)). The burden of proof of timely filing is on the appellant. No extension of time will be granted for filing a notice of appeal (25 CFR 2.9(a) and 2.16).

Within 30 days of the filing of the notice of appeal, a statement of reasons must be filed in the office of the official whose decision is being appealed. The statement of reasons may, however, be included in or filed with the notice of appeal (25 CFR 2.10). Appeals will be handled in accordance with provisions set forth at 25 CFR 2.20.

Part IV—BIA Area Offices—Area Social Workers

All application materials must be submitted in person or mailed to the appropriate Bureau of Indian Affairs' Agency Superintendent or Area Director. The following is a listing of the twelve BIA Area Social Workers designated by the Area Directors to receive tribal government ICWA grant applications:

Aberdeen Area Office: Peggy Davis; 115 4th Avenue, SE.; Aberdeen, South Dakota 57401; 605/226–7351.

Albuquerque Area Office: Joseph Naranjo; 615 1st Street; P.O. Box 26567; Albuquerque, New Mexico 87125–6567; 505/766–3321.

Anadarko Area Office: Retha Murdock; 1½ mile North Highway 281; WCD Office Complex; P.O. Box 368; Anadarko, Oklahoma 73005; 405/247–6673 x257.

Billings Area Office: Louise Zokan-Delos Reyes; 316 North 26th Street; Billings, Montana 59101; 406/657–6651.

Eastern Area Office: Evelyn S. Roanhorse; 3701 N. Fairfax Drive; Suite 260; Arlington, Virginia 22201; 703/235–2353.

Juneau Area Office: Jimmie Clemmons; 9109 Menden Hall Mall Road; P.O. Box 25520; Juneau, Alaska 99802–5520; 907/586–7628.

Minneapolis Area Office: Rosalie Clark; 331 South Second Avenue; Minneapolis, Minnesota 55401; 612/373–1182.

Muskogee Area Office: Alice A. Allen; Federal Courthouse Building; 101 North 5th Street; Muskogee, Oklahoma 74401–6206; 918/687–2507.

Navajo Area Office: Vivian Hailstorm; 300 West Hill Avenue; P.O. Box 1060; MC–440, Gallup, New Mexico 87301; 602/871–5151.

Phoenix Area Office: Stephen J. Lacy; 1 North First Street; P.O. Box 10; Phoenix, Arizona 85001; 602/379–6785.

Portland Area Office: Robert C. Carr; 911 N.E. 11th Avenue; Portland, Oregon 97232–4169; 503/231–6783.

Sacramento Area Office: Kevin Sanders; Federal Office Building; 2800 Cottage Way; Sacramento, California 95825; 916/978–4705.

Dated: March 18, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–7059 Filed 3–24–94; 8:45 am]

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federal register

Friday
March 25, 1994

Part VI

Department of the Interior

Bureau of Land Management
Office Hearings and Appeals

43 CFR Part 4 et al.
Department Hearings and Appeals Procedures; Cooperative Relations; Grazing Administration—Exclusive of Alaska; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Office of Hearings and Appeals

43 CFR Parts 4, 1780, and 4100

[WO–220–4320–02 24 1A]

RIN 1004–AB89

Department Hearings and Appeals Procedures; Cooperative Relations; Grazing Administration—Exclusive of Alaska

AGENCY: Bureau of Land Management, Office of Hearings and Appeals, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations that govern how the Secretary of the Interior, through the Bureau of Land Management, administers livestock grazing. This proposed rule would apply to all lands on which the Bureau of Land Management administers livestock grazing. This proposed rule would also amend the Department of the Interior's appeals regulations pertaining to livestock grazing to provide consistency with administrative remedies provided for in the grazing regulations, and would amend the regulations on cooperative relations to reflect changes in the organization of certain advisory committees. The proposed changes are a part of an overall effort to improve the management of the Nation's public rangeland resources. Public review and comment on this proposal is invited.

An advance notice of proposed rulemaking was published in the **Federal Register** on August 13, 1993 (58 FR 43208). Comments received on the advance notice have been considered in identifying and refining key components of the rangeland reform effort and in preparing this proposed rule.

Due to the great volume of comments anticipated on this proposed rule, the Department requests that reviewers identify the specific section and paragraph label for the regulatory text on which they are commenting. Specific statements of what regulatory text the reviewer feels should be modified, and the reasons for the recommended changes, are encouraged.

DATES: Comments on this proposed rule must be submitted in writing by July 28, 1994. Comments postmarked after this date will not be considered in the preparation of the final rule.

ADDRESSES: Send comments on this proposed rule to Rangeland Reform '94, P.O. Box 66300, Washington, D.C. 20035–6300. Comments delivered to an address other than above may not be considered in the preparation of the final rule.

Comments on the proposed rule will be made available for public inspection during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday. Viewing of the comments can be arranged by contacting the Bureau of Land Management at the telephone number provided below.

FOR FURTHER INFORMATION CONTACT: Mark W. Stiles, Regulations Analyst, Division of Legislation and Regulatory Management, Bureau of Land Management, (202) 208–4256.

SUPPLEMENTARY INFORMATION:

INTRODUCTION

This proposed amendment to 43 CFR parts 4, 1780, and 4100 is part of the Department of the Interior's Rangeland Reform '94 package. The provisions of this proposed rule are necessary to ensure proper administration of livestock grazing on the public rangelands and to bring about reform in the management of rangelands for the improvement, protection, and proper function of rangeland ecosystems. Many of the proposals would result in greater consistency between the administration of grazing on public rangelands by the Bureau of Land Management (BLM) and administration of grazing on National Forest System lands by the United States Forest Service (Forest Service). This proposed rule would govern the BLM's administration of livestock grazing on public rangelands. It is proposed under the principal authorities of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*; FLPMA), the Taylor Grazing Act (43 U.S.C. 315 *et seq.*), and the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 *et seq.*)

An advance notice of proposed rulemaking was published in the **Federal Register** on August 13, 1993 (58 FR 43208). The comment period on the advance notice ended September 13, 1993, and was subsequently reopened for a 30-day period that ended October 20, 1993. A notice of intent to prepare an associated environmental impact statement (EIS) was published in the **Federal Register** on July 13, 1993 (58 FR 37745), and August 13, 1993 (58 FR 43234). These notices requested public comment to assist in the scoping process for the EIS. The comment period on the second notice of intent closed September 13, 1993, and was subsequently reopened to correspond with the comment period on the advance notice of proposed rulemaking. A booklet entitled Rangeland Reform '94 was developed to describe the Secretary's proposal and approximately 35,000 copies were distributed to all BLM grazing permittees and lessees, interested Congressional staff, and other interested parties, in late August and September of 1993.

Reviewers of this proposed rule may find it helpful to refer to the advance notice of proposed rulemaking published in the **Federal Register**, August 13, 1993, in their consideration of this proposed rule. The advance notice contains some background material that has not been reproduced in this proposed rule.

During a three-month period beginning November 17, 1993, Secretary Babbitt met on 20 occasions around the West with groups which included western governors, State and local officials, ranchers, environmentalists and other public land users. He visited locations in Colorado, Wyoming, and Oregon where on-the-ground consensus groups were already engaged in addressing how land management decisions should be made, and participated in hundreds of hours of discussion about the components of rangeland reform. The meetings in Colorado, Idaho, Arizona, New Mexico, Wyoming, Oregon, Nevada and Utah resulted in many productive suggestions that are reflected in the new proposal.

As a result of public comments on the various documents distributed in the summer of 1993 and the meetings attended by the Secretary, the Department has modified many of the initial proposals for reforming rangeland management. The modified Rangeland Reform '94 proposal is summarized below. Much of the reform package is reflected in the proposed regulatory text provided in this document. The public is asked to review this revised proposal and provide comments and recommendations for improvement. Due to the great volume of comment anticipated, the Department requests that reviewers specifically identify the section and paragraph labels for the proposed regulatory text on which they are providing comment. Reviewers are also asked to provide suggested wording changes whenever possible. Comments on this proposed rule will be analyzed in detail and considered in the preparation of a final rule. The Department also intends to hold public meetings or hearings in western grazing States to obtain input on this proposal. Announcement of the place and time for these meetings or hearings will be made in a separate notice. The Department anticipates publication of the final rule late in calendar year 1994.

In addition to this proposed rule, the Bureau of Land Management and the Forest Service, as a cooperating agency, have prepared a draft EIS. The draft EIS is currently being printed and prepared for distribution, but advance copies are available for public review at the Department of the Interior Library, First Floor, 18th and C Streets NW, Washington, DC. Notice of availability of the draft EIS will be made through a separate publication in the **Federal Register**. The draft EIS analyzes in detail the proposed action and alternatives for improving the management of the Nation's public rangelands, including regulatory changes proposed in this rule. The draft EIS also invites public comment.

Rangeland Reform '94

Rangeland Reform '94 is a proposal developed by the Department of the Interior through BLM, in close cooperation with the U.S. Department of Agriculture and the Forest Service, for effecting fundamental policy changes, including adjustment of the Federal grazing fee, in its rangeland management program. The purpose of the proposed changes is to make the BLM's rangeland management program more consistent with ecosystem management, to accelerate restoration and improvement of the public rangelands, to obtain for the public fair and reasonable compensation for the grazing of livestock on public lands, and to streamline certain administrative functions. As a result of public input on the initial proposal, and as a result of the BLM's preliminary analysis of rangeland reform, two additional goals have been included: to provide a mechanism for effective public participation in decisionmaking, and to focus Federal and non-Federal management efforts where they will result in the greatest benefit. In achieving these goals the Department also intends to make BLM's administration of livestock grazing more consistent with that of the Forest Service.

There are five major categories of proposed management actions addressed in Rangeland Reform '94. These categories are (1) The Federal grazing fee and associated incentives, (2) effective public participation in rangeland management, (3) administrative practices, (4) range improvements and water rights, and (5) resource management requirements, including standards and guidelines. Proposed actions within each of these categories are discussed in detail elsewhere in this proposed rule.

Public Comment on the Initial Proposal

A total of about 12,600 letters were received from about 8,000 persons on the advance notice of proposed rulemaking, notice of intent to prepare an EIS, and the Rangeland Reform '94 summary booklet. These letters included over 56,000 individual comments. The specific aspects of the advance notice of proposed rulemaking generating the most comments were the grazing fee and water rights associated with range improvement projects. Initial proposals related to affected interests, grazing advisory boards, grazing permit and lease tenure, unauthorized subleasing, standards and guidelines and full force and effect also generated a great number of comments. Many letters expressed opinions that the overall rangeland reform proposal was a disincentive for good stewardship, would have major economic impacts on rural western communities, and would result in the "taking" of private property rights. A great number of comments supported the identified need for consistency between regulations of the BLM and the Forest Service.

At the invitation of Colorado's Governor Roy Romer, Secretary Babbitt met on nine separate occasions with a group of State and local officials, ranchers, conservationists and other land users in Denver and Gunnison, Colorado, for discussions regarding a process for building a consensus-driven local approach to rangeland management. The Colorado Working Group also made suggestions to change or improve the advance Rangeland Reform '94 proposal introduced in August, 1993. Similar meetings and follow-up discussions were held in Idaho, Oregon, and Nevada, in addition to meetings in Arizona, New Mexico, Utah and Wyoming.

These meetings with the Secretary involved hundreds of hours of discussion. Input from these meetings resulted in many of the changes and clarifications made in this proposed rule.

As a result of public comment the Department has made a number of changes in the initial proposal. An attempt has been made to identify the most substantial changes in the section-by-section analysis provided in this proposed rule.

Brief Discussion of Major Elements of Rangeland Reform '94

The following presents the general proposals of Rangeland Reform '94 and highlights significant changes made in response to public input on the advance notice of proposed rulemaking. Detailed descriptions of the specific regulatory changes being proposed are presented in the section-by-section analysis following this discussion.

The Federal Grazing Fee and Associated Incentives

This proposed rule presents a formula that is intended to correct the fundamental problems of the present fee.

The first problem is the wide disparity between rates charged for livestock forage on private and State lands versus the rate charged on Federal lands. In many western States, the fee for grazing on private nonirrigated lands is far greater than it is on Federal lands. As the following chart shows, in 1993, the private grazing land lease rates in most western States were several times the Federal fee.

1993 Private Nonirrigated Grazing Land Lease Rates Dollars per Animal Unit Month (National Agricultural Statistics Service)

Federal Fee	$1.86
Arizona	5.72
California	10.40
Colorado	9.70
Idaho	9.25
Kansas	11.30
Montana	11.40
Nebraska	17.00
Nevada	8.80
New Mexico	7.55
North Dakota	10.00
Oklahoma	7.10
Oregon	9.75
South Dakota	12.60
Texas	8.75
Utah	8.90
Washington	7.80
Wyoming	10.50

There are similar disparities between grazing fees charged on State lands and the Federal fee. For grazing year 1994 the Federal grazing fee established under existing regulations in 43 CFR part 4100, is $1.98 per animal unit month (AUM). This fee compares to western State trust land fees of as low as $1.53 in Arizona to fees ranging from $4.00 to more than $20.00 in some of the western States for their 1994 grazing year. The different formulas, and the use of competitive bidding in some States, make it difficult to present an average of the State trust land grazing fees, but in the States of Nevada, New Mexico, Wyoming, Montana, and Idaho, the largest States in terms of the number of BLM AUMs authorized, the State trust land fees per AUM range from a low of $3.00 in Wyoming to $4.53 in Idaho in 1994.

A second problem of the current fee formula is that while forage value in the private market has increased

substantially over time, the Federal grazing fee formula has produced relatively small increases and, in some years, decreases. In 1980, for example, the private grazing land lease rate for the 11 western States, weighted by survey weights as determined by the National Agricultural Statistics Service, was $7.53, while the Federal fee was $2.36; thus, the difference between the private and Federal rates in 1980 was $5.17. In 1993, the private grazing land lease rate for the 11 western States was $10.03, while the Federal fee was $1.86. Thus, the difference between the two figures had jumped to $8.17.

The proposed formula would address the failure of the existing formula adequately to reflect private grazing land market conditions by including a base value that considers the cost differences of operating on public lands as compared to private leases, as well as appraisal data, and by annually adjusting the fee in proportion to changes in private grazing land lease rates. After an initial phase-in period, the fee would be adjusted annually to reflect the change in the private land lease rate in the 17 western States (i.e., forage value index). Although no explicit index based on production costs or value of products produced is used, both factors influence the prices paid for forage and so are, to some extent, implicit in the forage value index. The proposed formula is essentially a return to the simpler formula that was in effect before 1978 using an updated base value.

While the proposed rule would move toward greater equity among fees, it would still result in a fee below the fees charged for grazing on State lands in most western States, and would fall well below private grazing land lease rates. The amount by which the fee would increase is similar to recent increases that have taken place at the State level; those increases have not led to noticeable shifts in the livestock industry or economic effects on communities in those States. This, when considered with the reasonableness of the proposed fee increase and the fact that more than 73 percent of BLM permittees and lessees would experience a fee increase of less than $1,000 per year, offers evidence that the proposed change in the fee would generally not have a significant impact on the stability of the dependent western livestock industry and would not have a serious detrimental effect on most permittees and lessees. Some permittees and lessees that are highly dependent on Federal forage, do not have off-ranch income, and have heavy debt loads may be required to make some financial adjustments. These adjustments, in some circumstances, may include sale of the ranch; however, it is expected that such sales will occur in limited circumstances. Such sales, it should be noted, are occurring and will continue to take place under current conditions, as well.

The economic impact on western communities is expected to be localized and, in most areas, not significant because that portion of the local economy that depends upon the use of Federal forage is relatively minor.

The initial proposal generated a great amount of public comment both for and against increasing the fee. Most of the comments related to the anticipated impacts to individual operators and to rural western economies. Many respondents suggested regional economic differences, the cost of investment in public lands, and overall rangeland resource conditions should be considered in determining grazing fees. Some felt the proposed fee would be economically devastating, and some felt that a fee increase was warranted, but the proposal represented too little or too great an increase.

As a result of the public input gained following the advance notice of proposed rulemaking and through the scoping process for the environmental analysis of Rangeland Reform '94, the Department has determined that the fee formula initially proposed represents a reasonable and equitable method for calculating the fee. However, an adjustment in the forage value index is proposed in this draft. A provision for an incentive-based fee has also been added.

A base value of $3.96 per AUM to be used in calculating the grazing fee is proposed in this rule. This value represents a midrange between the results obtained through the use of two methods for estimating a fair base value. Explanation of the methodology used in arriving at the $3.96 base value is presented in the discussion of section 4130.7–1. The proposed fee would be phased in over the years 1995 through 1997. Thereafter, annual increases or decreases in the grazing fee resulting from changes in the forage value index would be limited to 25 percent of the amount charged the previous year to provide for a measure of stability that would facilitate business planning.

This proposed rule would establish 1996 as the base year for the forage value index used in the formula. The forage value index would not be used to adjust the fee annually in response to market conditions until the year 1997. This proposed rule would establish the 1995 grazing fee at $2.75, and the 1996 grazing fee at $3.50. Thereafter the fee would be calculated, except as provided below, using the base value of $3.96 multiplied by the revised forage value index. By definition, the forage value index in the year 1997 would equal one; yielding a 1997 grazing fee of $3.96. In subsequent years the calculated fee would depend on the changes in the market rate for private grazing land leases as reflected by the forage value index. By comparison, the 1994 grazing fee established under the existing regulations is $1.98 per AUM.

This change in the derivation of the forage value index is proposed to reduce the uncertainty in the fee in the immediate future that resulted from using a forage value index based on less current private land lease rate data. Under the proposal presented in the advance notice of proposed rulemaking, the fee would have been adjusted annually by a forage value index based on the average price paid for private grazing in the years 1990 through 1992. Assuming that forage value index would have remained constant until the end of the phase in period provided in the advance notice, the formula would have yielded a grazing fee of $4.28 per AUM as compared to a 1997 fee of $3.96 per AUM using the revised forage value index.

The Department intends to examine the effect of the proposed grazing fee during the phase-in period to determine the need for any adjustment in the fee formula.

New provisions have been added to the proposed rule that would provide for an incentive-based grazing fee and would restrict implementation of the $3.96 base value in the event a separate regulation setting forth eligibility criteria is not issued by 1997. In recent years the Department has considered several proposals for incentive-based grazing fees targeted at permittees and lessees who have improved rangelands, contributed to healthy, functional ecological conditions, and fostered the achievement of resource condition objectives. The Public Rangelands Improvement Act (43 U.S.C. 1901 *et seq.*) and the Taylor Grazing Act provide authority for the Department to implement incentive-based grazing fees. The Department recognizes that an incentive-based fee would be a valuable tool for encouraging stewardship. It was not possible to develop proposed eligibility criteria for the incentive-based fee in time to include them in Rangeland Reform '94. However, in anticipation of the issuance of a separate rule setting forth eligibility criteria, the Department has included in the proposed rule a 30 percent reduction in

the grazing fee for permittees and lessees who meet the criteria. The 30 percent reduction would be implemented in the first grazing year after the Department issues a separate final rule setting forth the eligibility criteria. These criteria would focus primarily upon those permittees and lessees who agree to participate in special rangeland improvement programs characterized by best management practices, the furtherance of resource condition objectives, and comprehensive monitoring. The Department anticipates that eligibility criteria would require the permittee or lessee to undertake management practices beyond those otherwise required by law and regulation to benefit the ecological health of the public rangelands.

To ensure timely development of that rule, this proposed rule would provide that an alternative base value of $3.50 would be implemented in 1997 if the Department has not completed the eligibility criteria. The Department intends to use its best efforts to issue a final rule establishing incentive criteria in time to provide an opportunity for the reduced fee in grazing year 1996. Such a discount would result in a grazing fee of $2.77 per AUM in 1996 and 1997 for qualifying permittees and lessees. Reviewers are asked to provide suggested criteria for qualifying for the reduced fee that address the improvement and maintenance of rangeland health, the furtherance of resource condition objectives, and comprehensive monitoring.

Public Participation in Rangeland Management

An important element of true rangeland reform involves allowing more Americans to have a say in the management of their public lands. The American rangelands can be—and are—used for far more than grazing. Hiking, birding, fishing, hunting, and mountain biking are among the activities that are compatible with sound grazing practices. All of the public interests will be served by the public lands as long as all of the public interests are represented when decisions are being made. Thus, increased public participation is essential to bringing lasting changes to management of our public lands.

Included in this general category are proposals for the formation of multiple resource advisory councils in most BLM administrative districts and the involvement of the multiple resource advisory councils in the development of standards and guidelines for grazing, a provision allowing multiple resource advisory councils to establish and select members of rangeland resource teams and technical review teams for the purpose of providing input to be used by the resource advisory council in developing recommendations, removal of references to the National Public Lands Advisory Council, district advisory councils, and grazing advisory boards, and modification of how interested members of the public can become involved in specific grazing decisions.

Most comments on the advance notice, and a great deal of the input gained through the Secretary's visits to western states, supported modification of the initial proposal to expand the definition of affected interests, eliminate grazing advisory boards and district advisory councils, and create an advisory mechanism with broader representation and much more direct involvement. Many comments expressed a concern that local input would be overshadowed by interests not directly affected by the decisions to be made while others asserted that all citizens should have an equal say in the management of public lands. There was also a great amount of interest in making public participation more effective by encouraging consensus-based forms of decisionmaking.

During the period of November 1993, through January 1994, Governor Roy Romer of Colorado convened and conducted nine meetings of the Colorado working group on rangeland reform. Although this working group considered many of the proposals of Rangeland Reform '94, a key finding of the group was that the current framework employed by the Department and the BLM for encouraging community-based involvement was inadequate. This issue became the focus of much of the Working Group's efforts. The Working Group prepared a summary of their findings and a model for enhanced community-based involvement. The Department agrees with the findings of the group and has attempted to incorporate all key elements of the model for public involvement in this proposed rule. The Working Group's model is presented in its entirety below:

Models for Enhanced Community-Based Involvement in Rangeland Reform

January 20, 1994

The Colorado Rangeland Reform Working Group ("working group") is committed to these seven goals: (1) Healthy and sustainable rangeland ecosystems, (2) healthy, sustainable and diverse economies and communities (3) accountability of management and users of public lands to broad public goals, (4) efficient and effective management of our public lands, (5) fostering mutual respect among public land users, (6) encouraging the retention of private land open space, and (7) ensuring public lands are managed to comply with federal laws.

Consistent with these goals, the Colorado working group has concluded that the current framework for public and community-based involvement in public lands management is inadequate. That framework could be significantly enhanced by experimenting with a bottom-up, grass roots model of public participation that includes multiple interests and some identified areas of responsibility for on-the-ground rangeland management decisions, and ensures that all members of the public who wish to actively participate in public rangelands decisions, have a full opportunity to do so.

These recommendations are based on two principles: (1) This is a Colorado model (the Colorado working group recognizes that this Colorado model may not be applicable to other western states, and that there may be other models that are better suited to those states); and (2) that this Colorado model represents a change from the current and/or traditional management and that this is an experimental approach.

The working group has explored a number of different models based in part on the favorable experiences of community and ecosystem-based approaches like that underway in Gunnison, Colorado; the "Owl Mountain" example in Jackson, County, Colorado; the Coordinated Resource Management (CRM) experience near Craig, Colorado; and the Federal Lands Program in Montezuma County, Colorado. We recognize that these models may not be appropriate for other states.

For purposes of discussion, the attached "draft" represents an experimental approach to reforming the governance structure for advisory boards and community-based rangeland decision-making. Based on the working group's discussions to date, there is consensus on the basic approach suggested by these models—and consensus on the value of having Interior Secretary Bruce Babbitt share this draft with other states and experts in the Department of the Interior for their review. The group further agrees that many of the concepts and ideas described in this model could be useful and applicable to the U.S. Forest Service.

I. Multiple Resource Advisory Councils

The working group recommends that Multiple Resource Advisory Councils be created in order to advise the BLM on a wide variety of public lands issues, including grazing.

Group consensus exists that these councils should:

- Focus on the full array of ecosystem and multiple use issues associated with federal lands.
- Have up to 15 members appointed on a nonpartisan basis by the Interior Secretary. In making the appointments, the Secretary shall consider the recommendations of the Governor. Membership shall be self-nominated. Members could be nonresidents.

Nominations will be accompanied by letters of recommendation from local interest groups which the nominee will be representing. At least one member will be a local elected official.

- Require that members bring to the table; (1) a commitment to collaborate, (2) relevant experience or expertise, and (3) a commitment to success and to apply the law.
- Require that, in the aggregate, council membership must represent the full array of issues and interests, custom and culture related to federal land use, management, protection, and a general understanding of the federal laws and regulations governing these lands.
- Participate directly and effectively in the preparation and amendment of resource management plans.
- Serve as a link between broad national policy direction and the more specific local, on-the-ground actions and public input.
- Have an effective role with respect to influencing or guiding decisions about the implementation of resource area plans.
- Require that all council members attend a "rangeland ecosystem course of instruction" within three months of their appointment. (The working group agreed to an acceptable standardized curriculum and process—such as the Rangeland Ecosystem Awareness Program developed by a subgroup—with a full understanding of the associated costs and a number of the details yet to be worked out.)
- Each council shall develop a policy on attendance to encourage full participation of all members.

Jurisdictional Level

Since the purpose of Multiple Resource Advisory Councils is to foster broader public input in planning and management activities by federal public lands agencies, it makes sense for Councils to operate at a Jurisdictional level that is: (1) Close to local communities, and (2) close to the land planning decisions made by federal agencies while still ensuring that they are readily available and open to public comment.

The Colorado working group believes that to be effective in the State of Colorado, these advisory bodies need to be created at the Bureau of Land Management (BLM) District level. As appropriate, the formation of these Councils should also allow for the integration of both BLM and Forest Service units into one Council, and as the respective agencies move toward management and planning on an ecosystem basis, the Councils should re-align accordingly.

A governor or a Multiple Resource Advisory Council could petition the Secretary to authorize these Councils at a BLM Resource Area level if that was thought to be desirable. A Rangeland Resource Team (described below) could make such a request to the Multiple Resource Advisory Council.

Membership

All interests, uses, and values should be represented to the extent possible, and a balanced composition should be achieved. The District BLM manager (or his/her designee) would be non-voting ex-officio members of the Council. Members would not be required to reside in the counties served by the respective BLM District. Members would be required to demonstrate relevant experience and knowledge of the lands and communities in their Jurisdictional area. A single individual could serve on only one Council.

Functions

The council would be advisory in nature. Council members would be involved in the preparation, amendment and implementation of federal agency land management plans in an advisory capacity. If the Council disagreed with a federal land manager's decision that relates to one of the Council's functions, the Council would have the authority to submit a request for review of the decision to the Secretary. The Secretary's office would have discretion on the timeliness of a response, although a date certain could be encouraged (20 to 30 days).

A Council's opportunity to influence land management decisions shall be in compliance with the public participation process outlined by federal laws (The National Environmental Policy Act, the Federal Advisory Committee Act, the Administrative Procedure Act, etc.) Opportunities to streamline and simplify these procedures need to be explored (perhaps by fully utilizing other authorities noted in the Federal Land Policy and Management Act and the Public Rangelands Improvement Act).

The Council would have the authority to designate Rangeland Resource Teams (described below) and Technical Review Teams to address specific issues or problems in the District and/or serve as fact-finding teams.

Councils should work to promote better public participation and engagement in land management decisions, and to foster conflict resolution through open dialogue and collaboration instead of litigation and bureaucratic appeal.

Creation

If it is thought to be desirable to authorize Multiple Resource Advisory Councils at other levels (i.e., below the BLM District level), a governor or Multiple Resource Advisory Council could make that request to the Secretary, or the Rangeland Resource Team could make such a request to a Multiple Resource Advisory Council. Multiple Resource Advisory Councils could be created or "chartered" in one of three ways:

1. By local initiative and official appointment by the State BLM Director.
2. By local initiative and appointment by the Secretary.
3. By the Secretary with due consultation given to any recommendations offered by the Governor.

II. Rangeland Resource Teams

Within each BLM District and administrative unit, local Rangeland Resource Teams could be formed for the purpose of enhancing public and community-based involvement in federal public lands decision-making.

Rangeland Resource Teams are premised on the notion that rangeland decisions ought to be made with good stewardship, with appropriate multiple use and compliance with federal laws as guiding principles. They are also premised on the following principles:

- Permittees are in the best position over time to exercise good stewardship, and to ensure full compliance with federal laws, and that this opportunity is further enhanced by direct dialogue and full participation of community-based environmental and wildlife/sportsmen interests.
- Good stewardship and full compliance with federal law is enhanced and strengthened when community and public interests are empowered with permittees, members of the public and agency officials in making decisions.
- A substantial portion of the increase in grazing fee revenues from public lands should be retained and expended at the local level for the purpose of promoting the ecological health of the range and investing in good stewardship practices.
- There is value in empowering individuals no matter where they live to work in concert with federal and public interests in resolving local public lands/rangeland issues at the community level.

It is expected that these community-based Rangeland Resource Teams will have a true ecosystem focus. With time and experience, this model could be organized around eco-regions rather than according to arbitrary land ownership and federal management boundaries.

This vision cannot be achieved in one step. The opportunity presented by this model is to encourage good stewardship by permittees and other users, and to improve rangeland use, rangeland ecosystems and management. The Colorado working group believes this model is an important step toward enhancing these goals—while laying the foundation for this broader vision.

Jurisdictional Level

In order to have credibility and to ensure that both community and public interests are represented, Rangeland Resource Teams should be allowed to spring up in as small an area as a single allotment but in no case to go beyond an area larger than that encompassed by the corresponding Multiple Resource Advisory Council for that area.

Creation

They could be established and dissolved in any of the following ways:

1. By local initiative and petition to a respective Multiple Resource Advisory Council. If a petition is denied, the locals could petition to be a FACA (Federal Advisory Committee Act) body (see below).
2. By the Multiple Resource Advisory Council when deemed necessary by that Council.

As a matter of formality, all appointments would be made by the Multiple Resource Advisory Council. The teams could be terminated by an affirmative act of the Council. Individual terms for team members would be established by the Council.

Membership

Rangeland Resource Team membership would be limited to five members from the

following interests: Two resident permittees who hold permits in the area, one resident at-large community representative, one environmental representative and one wildlife/recreation representative. The environmental representative and the wildlife/recreation representative could be nonresidents; however, all members shall be required to demonstrate substantial knowledge and experience of the land and community where they serve. Nominations will be accompanied by letters of recommendation from local interest groups which the nominee will be representing.

These members would be required to participate in a "rangeland ecosystem course of instruction" (the working group agreed to an acceptable standardized curriculum and process—such as the Rangeland Ecosystem Awareness Program developed by a subgroup—with a full understanding of the associated costs and a number of the details yet to be worked out), and would also be required to demonstrate knowledge of the local rangeland ecosystem.

Under this alternative, at least one member of the resource team must also be a member of the Multiple Resource Advisory Council. Other team members could also serve as members of the Multiple Resource Advisory Council—but such dual appointment would not be required. For purposes of this section, residency means two years.

Functions

The primary function of Rangeland Resource Teams is to encourage good stewardship, collaborative solutions and healthy rangeland ecosystem management through collaboration and by providing recommendations and information to the Multiple Resource Advisory Councils.

These teams would encourage community and public participation and problem-solving on the ground. Rangeland Resource Teams could have authority to spend the 12.5% range improvement monies currently under the authority of grazing advisory boards, according to state law.

Rangeland Resource Teams would also be empowered to develop proposed solutions for local rangeland problems and make recommendations to Multiple Resource Advisory Councils. These teams would participate in developing resource management plans, act as fact finding bodies and make recommendations on rangeland improvement monies.

The Multiple Resource Advisory Councils shall give careful consideration to the recommendations, options and information provided by the Rangeland Resource Teams.

Rangeland Resource Teams could be charged with assisting in monitoring rangeland health and reporting on the full scope of their activities to the Multiple Resource Advisory Councils on a regular basis. In addition, Rangeland Resource Teams could be charged with assisting in implementing programs such as the Rangeland Ecosystem Course of Instruction.

In cases where Rangeland Resource Teams disagree with a management decision by the federal land manager, the team could petition the Multiple Resource Advisory Council for an opinion or create a Technical Review Team (see below) to make recommendations on specific issues. This does not preempt the ability of any citizen to challenge a management or planning decision through the existing administrative and legal appeal process.

Although federal or state land managers would not be members of the Rangeland Resource Teams, open communication and collaboration with federal land managers would be expected and encouraged. Federal land managers should be ex-officio members of the boards.

Rangeland Resource Teams could petition the Secretary for recognition as advisory bodies under FACA. In such cases, these teams would be authorized to directly advise federal land managers.

III. Technical Review Teams

Technical Review Teams (TRTs) can be established on an as needed basis by Multiple Resource Advisory Councils or Rangeland Resource Teams if they are operating as a FACA body (see above). The Rangeland Resource Teams may request the Multiple Resource Advisory Councils to establish TRTs. In some instances, the need for the TRT may be negated by the Rangeland Resource Team performing a fact-finding role. Bodies that create TRTs (Multiple Resource Advisory Councils or Rangeland Resource Teams that are functioning as FACA advisory bodies) must have at least one member on those TRTs.

TRTs could be empowered to investigate and develop proposed solutions to specific resource issues which may arise in the local area. Such teams may also participate in the development of resource management plans by providing information and options to the Multiple Resource Advisory Councils. TRTs can function as "fact finding" teams. Selection of TRT members should be at the discretion of the Council and may be based on the recommendations of the Rangeland Resource Team, but members should possess sufficient knowledge and expertise about the resource issues in the area. Federal land managers as well as members of other governmental agencies could be ex-officio members of these teams.

The Federal Land Policy and Management Act of 1976 directs the Secretary to establish advisory councils of not less than 10 and not more than 15 members appointed from among persons who are representative of the various major citizens' interests concerning the problems relating to land use planning or the management of the public lands located within the area for which an advisory council is established. To comply with this direction and to improve on current practices for obtaining advice on the management of public lands and resources, the Department has adopted the suggestions, with appropriate modifications, provided in the Colorado model for purposes of its proposed rule.

The proposed rule would establish multiple resource advisory councils. These councils would be subject to the Federal Advisory Committee Act (5 U.S.C. Appendix; FACA). The multiple resource advisory councils would focus on the full array of ecosystem and multiple use issues associated with BLM-administered public lands. However, the multiple resource advisory councils would not provide advice on internal BLM management concerns such as personnel or budget expenditures.

A multiple resource advisory council would typically be established for each BLM administrative district, but under this proposed rule the area of jurisdiction could be modified to permit ecosystem-based management and planning. The Department intends that BLM State Directors would be encouraged to consider whether the formation of multiple resource advisory councils along ecoregion boundaries would be a more effective organization for obtaining advice on the management of public lands within their areas of responsibility. A governor or multiple resource advisory council could petition the Secretary to authorize these councils at a BLM resource area level.

The multiple resource advisory councils would advise the Secretary of the Interior and Bureau of Land Management on matters relating to ecosystem and multiple use issues associated with public lands and resources under the administrative jurisdiction of the BLM. Multiple resource advisory councils would provide advice on preparation, amendment, and implementation of land use management plans and activity plans, and would be consulted in the planning for range development and improvement programs and the preparation of standards and guidelines for grazing administration. The multiple resource advisory councils would not be involved in matters such as personnel decisions, or the allocation of budget except to the extent of providing advice on the establishment of long-term plans and resource management priorities.

Multiple resource advisory council members would be appointed by the Secretary or other Federal official designated by the Secretary. Governors of States in which the councils would be organized would be requested to provide a list of nominees for the Secretary's consideration. The Secretary would encourage Governors to formulate nominations through a process open to the public, and would consider whether such a process was undertaken in evaluating the nominations. In addition, a public call for nominations would be made through a notice in the **Federal Register** as is provided in the existing 43 CFR 1784.4–

1. Persons could nominate themselves for membership. Nominations would be required to be accompanied by letters of recommendation from local interests that the nominee would be representing. The Department invites public comment on whether such letters should be required to come from individuals within the area to be served by the multiple resource advisory council.

Membership of the multiple resource advisory council would reflect a balance of views to ensure that the council represents the full array of issues and interests associated with public land use, management, protection and an understanding of the Federal laws and regulations governing public lands. Individuals would qualify to serve on a multiple resource advisory council because they have a commitment to collaborative effort, possess relevant experience or expertise, and have a commitment to the successful resolution of resource management issues and to applying the relevant law. An individual may serve on only one multiple resource advisory council.

Each of the multiple resource advisory councils would have 15 members, selected by the Secretary, with criteria for membership clearly outlined. One third of the members of each multiple resource advisory council would be selected from persons representing commodity industries, developed recreational activities, or use of public lands by off-highway vehicles; one third would be selected from representatives of nationally or regionally recognized environmental or resource conservation groups and wild horse and burro interest groups, from representatives of archaeological and historical interests, and from representatives of dispersed recreational activities; and one third would be selected from persons who hold State, county, or local elected office, and representatives of the public-at-large, Indian tribes within or adjacent to the area, natural resource or natural science academia, and State agencies responsible for the management of fish and wildlife, water quality, water rights, and State lands. At least one member of each multiple resource advisory council would be required to be an elected official in the area covered by the council, in accordance with the requirements of section 309 of FLPMA. The proposed rule would require the Secretary or designee to provide for balanced and broad representation from within each of the three categories in appointing members of a multiple resource advisory council.

All members of a multiple resource advisory council would be required to attend training in the management of rangeland ecosystems to ensure a common understanding of many of the scientific, economic, social and legal considerations involved in managing public lands. The Colorado working group developed a proposal for a "Range Ecosystem Awareness Program" that would establish a basic curriculum that would include: basic rangeland ecology, human resource development, the relationship of public land resources to private lands and communities, and the pertinent laws and regulations affecting rangeland management. The Department intends to consider the Working Group's proposal in developing the curriculum for the training of advisory council members and invites public comment and suggestions on the content and structure of this required training.

The Department intends that multiple resource advisory councils would employ a consensus-building approach in developing recommendations for the BLM manager to whom they would report. To encourage this, the proposed rule would require that at least three council members from each of the three groupings of interests must be present to constitute an official meeting of a council, and at least three members from each of the three groupings of interest must be in agreement for a council to provide an official recommendation to the BLM official to whom the council reports.

Where a multiple resource advisory council has concerns that its advice is being arbitrarily disregarded, the council, upon agreement of all members, could request that the Secretary respond to such concerns within 60 days. This opportunity for direct communication with the Secretary is separate and distinct from the administrative appeals process and the Secretary's response would not constitute a decision on the merits of any issue that is or might become the subject of an administrative appeal.

Under this proposed rule the multiple resource advisory councils could establish rangeland resource teams to enhance public and community-based involvement in public lands decision-making pertaining to livestock grazing. Rangeland resource teams would provide local level input to the multiple resource advisory council and would serve as fact-finding teams. The rangeland resource teams may, among other functions, provide input to the multiple resource advisory councils for grazing-related portions of land use plans and the planned expenditure of range improvement moneys. At the direction of the multiple resource advisory councils, rangeland resource teams may provide input and recommendations to the multiple resource advisory council for an area ranging from a single grazing allotment to the entire area under the jurisdiction of the multiple resource advisory council.

Under the proposed rule, local citizens could petition the multiple resource advisory council to establish a rangeland resource team, or a rangeland resource team could be established by the multiple resource advisory council on its own initiative. Rangeland resource teams would have a minimal core membership that would include two resident permittees who hold Federal grazing permits or leases within the area for which input is sought, one resident at-large community representative, one environmental representative and one wildlife/recreation representative. For purposes of the proposal, in order to be a resident, an individual must have lived within the geographical area covered by the rangeland resource team for at least two years. The environmental representative and the wildlife/recreation representative could be nonresidents. However, all members would be required to demonstrate substantial knowledge and experience of the land and community where they serve. Nominations would be required to be accompanied by letters of recommendation from the local interests that the nominees will be representing. At least one member of the core group would also be a member of the multiple resource advisory council. All members of the rangeland resource team would be required to attend the training in the management of rangeland ecosystems required for members of the multiple resource advisory council.

Since the rangeland resource teams would provide local-level input, perform a fact-finding role and provide options and recommendations to the multiple resource advisory council, as opposed to serving in an advisory capacity to Federal land managers, it is anticipated that these groups would not be subject to the requirements of FACA. However, rangeland resource teams could petition the Secretary for recognition as advisory bodies under FACA. In such cases, the rangeland resource teams would be authorized to directly advise Federal land managers on matters pertaining to livestock grazing.

Rangeland resource teams would have opportunities to raise any matter of concern with the multiple resource advisory council and to request that the multiple resource advisory council form

a technical review team, as described below, to provide information and options to the council for their consideration.

The proposed rule provides that multiple resource advisory councils could establish technical review teams on an as-needed basis in response to requests of interested citizens, the authorized officer, or on their own motion. Technical review teams could also be established on an as needed basis by rangeland resource teams that have been chartered as FACA bodies. Technical review teams would be limited to tasks assigned by the multiple resource advisory council or chartered rangeland resource team and would report to the parent committee. The technical review teams would consider specific issues for the purpose of providing local level input and serving as fact-finding teams. The technical review teams would not be subject to FACA because they will not be advising Federal officials. A technical review team would be dissolved by the parent committee upon completion of the assigned task.

The membership of a technical review team would be selected by the multiple resource advisory council, or rangeland resource team where chartered under FACA. The technical review team would be required to include at least one member of the multiple resource advisory council or chartered rangeland resource team.

Rangeland resource teams and technical review teams serving in a fact-finding role for the purpose of providing input to the multiple resource advisory council would in no way preclude the collection and analysis of scientific data by BLM, or the BLM's use of technical experts from outside of the Bureau. To the contrary, information collected by the fact-finding teams and BLM should be complementary and, in combination, would provide a multiple resource advisory council with a solid basis from which to form a recommendation.

An alternative concept for technical review teams is also under consideration. Under this alternative, technical review teams would be formed to address specific unresolved technical issues by the BLM authorized officer on the motion of the BLM or in response to a request by the multiple resource advisory council. Where the technical review team is requested by the multiple resource advisory council, the charge for the technical review team would be written jointly by the BLM and the advisory council. The purpose of the team would be to gather and analyze data and develop recommendations to aid the decisionmaking process, and functions of the team would be limited to tasks assigned by the authorized officer. Review team members would be composed of BLM or other government employees, with at least one member from a State agency or a Federal agency other than BLM. The authorized officer would also be allowed to employ and compensate private sector consultants who would function as team members, and to compensate team members for per diem and travel expenses. The authorized officer, in consultation with the multiple resource advisory council, would determine team membership, establish the task of the technical review team, appoint a team leader, provide administrative support, and determine when the team should be disbanded. In the selection of team members, preference will be given to scientific and technical experts who have experience in the bio-physiographic region of concern.

The authorized officer would be required to specify a time period for the completion of the assigned task. Technical review teams would terminate upon completion of the task assigned, or the time period established by the authorized officer, whichever comes first.

The alternative concept for technical review teams would not result in the formation of advisory committees under the Federal Advisory Committee Act because team members would either be Federal or other government agency employees, or paid consultants. The Department invites public review and comment on this alternative as well as the concept for technical review teams included in the proposed rule.

While specific functions for rangeland resource teams and technical review teams are outlined in this proposed rule, there is another reason for their creation. The teams are designed to facilitate input from the many consensus groups that have formed—and will form—throughout the West. Groups such as the Gunnison Group from Colorado, the Oregon Watershed Improvement Group and Wyoming's Sun Ranch Stewardship effort all took root voluntarily. These groups are proving that ranchers, environmentalists and others can come to agreement on land management practices. Rather than replace these kinds of groups, the new teams are designed to bring them closer to the process, to allow their influence to spread across the West.

Although FLPMA requires that the Secretary establish advisory councils, there is no statutory requirement for the formation of rangeland resource teams and technical review teams. While the Department views the provisions for multiple resource advisory councils' use of rangeland resource teams and technical review teams as significant advances in the promotion of public participation and consensus-based decisionmaking, the Department recognizes that the success of the concept would hinge on many factors. Active participation, willingness to donate time and travel expenses, willingness to work collaboratively toward recommendations to the advisory councils, and knowledge of resource management principles are all critical to the success of the rangeland resource team and technical review team concept.

In recognition of the demanding requirements for the success of the two forms of input teams, the Department is considering an alternative of proposing the use of rangeland resource teams and technical review teams on an experimental basis rather than adopting the proposal BLM-wide. The Department invites the public to comment on the merits of providing for the use of rangeland resource teams and technical review teams on an experimental basis. Comments are specifically requested on the criteria for selecting areas for the experimental implementation of the rangeland resource teams and technical review teams. Criteria could include broad-based support for participation in a consensus-building approach among the interested parties, and interested parties having demonstrated the ability to work cooperatively and provide consensual advice on public rangeland issues.

Range Improvements and Water Rights

The initial proposals pertaining to ownership of range improvements and water rights generated a great number of comments. Most of the comments were not opposed to the intent of the proposed changes to conform with the common practice of keeping title to permanent improvements in the name of the party holding title to the land. However, many respondents expressed concern that the wording suggested that the Federal government would take existing rights to range improvements and water. The text pertaining to range improvement ownership has been modified in this proposed rule and a new section has been added to clarify the provisions for water rights associated with livestock grazing on public lands.

The proposed rule would require that title to all new grazing-related improvements constructed on public lands, or made to the vegetation resource of public lands, except

temporary or removable improvements, would be in the United States. Since the proposed change would be prospective, valid existing rights to range improvements and compensation therefor under section 402(g) of FLPMA (43 U.S.C. 1752(g)) would not be affected. The permittee or lessee may hold title to removable range improvements authorized as livestock handling facilities such as corrals, creep feeders and loading chutes, and to temporary improvements such as troughs for hauled water. With respect to new permanent improvements, a permittee's, lessee's, or cooperator's interest for contributed funds, labor, and materials would be documented. This documentation is necessary to ensure proper credit pursuant to section 402(g) of FLPMA, which provides compensation for the permittee's or lessee's authorized permanent improvements whenever a permit or lease is canceled, in whole or in part, in order to devote the lands to another public purpose. New permanent water improvement projects such as spring developments, wells, reservoirs, stock tanks, and pipelines, would be authorized through cooperative range improvement agreements.

The proposed rule would carry forward the proposals in the advance notice regarding the distribution and use of range improvement funds and add a requirement to consult with multiple resource advisory councils during the planning of range development and improvement programs.

The proposed rule provides consistent direction for the BLM regarding water rights on public lands for livestock watering purposes. It is intended to generally make BLM's policy consistent with Forest Service practice, and with BLM policy prior to being changed in the early 1980's.

Under the proposed rule, any new rights to water on public land for livestock watering on such land would be acquired, perfected, maintained, and administered under State law. In all cases involving the development and registration, pursuant to State law, of new rights to water on public land for livestock watering, cooperative agreements will be used to provide that such livestock water rights are to be used and maintained in conjunction with the grazing permit or leases and do not give rise to a claim for compensation in the event the permit or lease to which it is attached is canceled in whole or in part to devote the lands to another public purpose.

The proposal would not create any new Federal reserved water rights, nor would it affect valid existing water rights. Any right or claim to water on public land for livestock watering on public land by or on behalf of the United States would remain subject to the provisions of 43 U.S.C. 666 (the McCarran Amendment) and section 701 of FLPMA (43 U.S.C. 1701 note; disclaimer on water rights). Finally, the proposal would not change existing BLM policy on water rights for uses other than public land grazing, such as irrigation, municipal, or industrial uses.

With respect to new water rights, some comments have suggested that permittees and the United States file jointly for water rights on public lands associated with livestock watering on public lands. When permitted by State law or regulation, for ease of administration, co-application with the lessee could be authorized, as it is in Wyoming. The proposed rule does not contain such a provision, although if joint filing is permitted under State law, and filing exclusively in the name of the United States is not, then the proposed language would permit joint filing. Comments are specifically sought on whether the rule should mandate joint filing to the extent consistent with or even if not permitted under, State law or if the current language in the proposed rule is preferable. Comments are sought in particular on whether co-applications should be allowed where it would not change the underlying ownership of the water right.

Administrative Practices

Included in this category are disqualification of applicants for grazing permits and leases, expedited procedure for the review of administrative appeals and implementation of decisions, issuance of grazing preference, a surcharge for the authorized leasing or subleasing of grazing preference associated with base property or pasturing of livestock owned by other than the permittee or lessee, suspended nonuse, and unauthorized use.

The Department has made several changes in the initial proposals affecting administrative practices in response to public input. Aspects of the initial proposals regarding administrative practices that received the greatest number of comments were adjustments in permit and lease tenure as a performance incentive, full force and effect of decisions, disqualification of applicants who have had permits or leases canceled for violation of terms and conditions of State and Federal grazing permits, authorized leasing and subleasing surcharges, and the elimination of suspended nonuse.

The proposal to limit permit and lease tenure in some instances to 5 years has not been carried forward from the advance notice of proposed rulemaking. Public comment on the advance notice suggested the proposal would do little to encourage stewardship and would inadvertently penalize operators new to public land grazing, especially those starting in the business, by inhibiting their ability to secure necessary financing. The Department agrees that the proposal in the advance notice related to permit and lease tenure could result in unacceptable impacts and has withdrawn that proposal.

The proposal in the advance notice of proposed rulemaking to place grazing administration decisions in full force and effect generated some confusion and has been clarified in this proposed rule. The objective of placing decisions in full force and effect is to expedite placing decisions into effect to benefit resource conditions and to address administrative problems. The proposal would not take away the ability of affected parties to file an appeal or to request a stay of the decision until such time as the appeal is decided. The Department believes this is critical to meet the goals of streamlining administration and focusing limited resources where they can do the most good, and has retained the substance of the initial proposal. An attempt has been made to clarify the explanation of the proposed appeal provisions in this rule.

Under the proposed rule, persons choosing to appeal a decision of the authorized officer would be provided a 30-day period in which to file an appeal. Appellants requesting a stay of the decision would be required to file a petition for stay with their appeal. In the instance where a petition for stay has been filed with an appeal, the Department of the Interior's Office of Hearings and Appeals would have 45 days from the expiration of the 30-day appeal period either to grant or deny the petition for stay, in whole or in part. Thus, where a person has filed a petition for stay of the decision of the authorized officer along with an appeal, and where the request for stay is denied, implementation of the decision could be delayed up to 75 days. In the event a stay of the decision is granted, the decision would be stayed until such time as a determination on the appeal is made.

The initial proposal to disqualify applicants for grazing permits and leases as a result of cancellation of State or Federal grazing permits and leases during the 36 months preceding application has been modified in

response to public comment. This proposed rule would limit the provision for disqualification on the basis of cancellation of grazing permits during the preceding 36 months to applications for new or additional permits and leases. Also, consideration of an applicant's history of compliance with the terms and conditions of State permits and leases has been limited to State permits and leases within the boundary of the Federal grazing allotment for which application has been made. Cancellation of such State permits or leases within 36 months prior to application would disqualify applicants for new or additional Federal permits or leases. A new provision has been added that would make it clear that partial suspension of a Federal grazing permit or lease would not be grounds for disqualification. Partial suspension of a permit or lease is a measure used where actions of the permittee or lessee are not determined to justify cancellation. The Department feels that disqualification of applicants on the basis of partial suspension would result in excessive punitive action and would reduce the usefulness of partial suspension in addressing violations.

The advance notice of proposed rulemaking provided for automatic disqualification on the basis of the suspension or cancellation of an applicant's other Federal or State grazing permits or leases during the 36 months prior to application. Under the proposed rule, the consideration of an applicant's history of performance on other Federal or State grazing permits or leases would not apply to applicants for the renewal of a BLM grazing permit or lease. The Department invites comment on whether an applicant's history of performance on other Federal and State grazing permits and leases should be added as a discretionary, rather than automatic, basis for determining qualification for the renewal of a BLM grazing permit or lease. Also, the Department invites comment on whether a similar provision for a discretionary review of past performance should apply to applicants for new or additional BLM permits or leases, in addition to the automatic disqualification where an applicant has had a Federal or State permit canceled for violation during the 36 months prior to application.

The proposal presented in the advance notice of proposed rulemaking to eliminate suspended nonuse generated concern that property rights and financing agreements would be affected. The Department does not agree with these comments. For the most part it appears that these suspended AUMs have no real impact on ranches or on the condition of public lands. The initial proposal was intended to remove all reference to suspended nonuse because only in rare instances has forage placed in this category been made available for livestock consumption. However, given the contentious nature of the issue and the fact that the Department views the matter as merely an administrative record-keeping issue, this proposed rule does not carry forward the elimination of suspended nonuse presented in the advance proposal.

Numerous comments were received on the Department's proposal to levy a surcharge when the private property serving as a base for public land grazing is leased or when livestock owned by other than the grazing permittee or lessee are pastured on public lands. This proposal was made in response to findings of the General Accounting Office (see, e.g., RCED–86–168BR), the Office of the Inspector General (see report #92–1–1364) that permittees and lessees who sublease are unduly benefitting from their permits or leases. A major criticism of the initial proposal was that it would penalize leasing arrangements with sons and daughters of permittees and lessees who are grazing a few animals as part of an educational or group project, or sons and daughters who are trying to build a livestock herd in anticipation of assuming all or part of the family operation. The Department recognizes the need to avoid penalizing children of grazing permittees and lessees in these situations and has provided for an exemption from the authorized subleasing surcharge for sons and daughters of public land permittees and lessees. A broader criticism, which surfaced during meetings in Nevada, is that most pasturing agreements are a means of financing available to ranchers who might not be able to finance their own inventory, and that contrary to the findings of the General Accounting Office reports, they do not involve windfall profits taken by absentee landlords and permit or lease holders. Some Nevada participants also suggested that any surcharge on the subleasing of permits and leases should be formulated as a percentage of the return on the sublease rather than a percentage of the Federal grazing fee. The Department invites comment on these two considerations.

Some of the comments received on the proposals relating to prohibited acts suggested that the proposed wording was subject to broad interpretation that could lead to punitive action in response to violations unrelated to grazing use. Subpart 4140, "Prohibited Acts," would be amended to modify the list of acts that are prohibited on public lands that could result in the loss of grazing permits or leases under subpart 4170. Particular attention is invited to proposed section 4140.1(b)(12), which refers to Federal or State laws or regulations concerning, among other things, conservation or protection of natural and cultural resources or environmental quality when public lands are involved or affected.

There are, of course, a great many laws or regulations that might fit within this category. These laws have independent enforcement authority; that is, violations are dealt with under penalty provisions in these laws themselves. This section of the existing regulations provides the possibility, in addition to these penalty provisions, of loss of the grazing permit or lease for violations.

It is not the intent of the proposal for the authorized officer to take enforcement steps involving the grazing permit or lease for any and all violations, no matter how *de minimus* or technical; or for violations of laws that, while they do deal with protection of natural and cultural resources or the environment, do not centrally reflect upon the ability of the permittee or lessee to be a good steward of the public lands.

Rather, the intent is to provide the possibility of loss of the grazing permit or lease whenever more than *de minimus* violations of laws occur that do concern, in a more than remote way, the management of the public lands. Subsection (b)(12) (i) through (vi) contains a narrative description of the kind of laws that, in our judgment, do directly concern stewardship ability on the public lands. It is difficult to go beyond such a narrative description to list such laws with precision, particularly in the text of the regulation itself. If that were done, a new rulemaking would be necessitated each time a law were changed by the Congress, which happens not infrequently. Furthermore, a detailed list of laws, with statutory and section numbers, would be lengthy and probably require the assistance of a law-trained person to decipher.

A proposed list of such laws, more than *de minimus* violations of which could lead to loss of a grazing permit or lease, follows. Public comment is specifically invited on the list. Upon promulgation of the final rule, the final list of such laws would be made available to each authorized officer and each permittee and lessee.

Animal Damage Control—7 U.S.C. 426

Bankhead-Jones Farm Tenant Act—7 U.S.C. 1012
Federal Environmental Pesticide Control Act, as amended—7 U.S.C. 136, *et seq.*
Federal Insecticide, Fungicide & Rodenticide Act—7 U.S.C. 135, *et seq.*
Airborne Hunting Act—16 U.S.C. 742j-1
Anadromous Fish Conservation Act—16 U.S.C. 757a, *et seq.*
Antiquities Act—16 U.S.C. 431, *et seq.*
Archeological Resources Protection Act—16 U.S.C. 470aa, *et seq.*
Bald and Golden Eagle Protection Act—16 U.S.C. 668
Endangered Species Act, as amended—16 U.S.C. 668aa, *et seq.*—16 U.S.C. 1531, *et seq.*
Erosion Act (Soil Conservation)—16 U.S.C. 590a, *et seq.*
Fish and Wildlife Act of 1956—16 U.S.C. 742a, *et seq.*
Fish and Wildlife Coordination Act—16 U.S.C. 661, *et seq.*
Historic Sites, Buildings and Antiquities Act—16 U.S.C. 461, *et seq.*
Lacey Act, as amended—16 U.S.C. 851, *et seq.*
Migratory Bird Conservation Act—16 U.S.C. 751, *et seq.*
Migratory Bird Treaty Act—16 U.S.C. 703, *et seq.*
National Forest Management Act of 1976—16 U.S.C. 1600, *et seq.*
National Historic Preservation Act, as amended—16 U.S.C. 470, *et seq.*
National Trails System Act, as amended—16 U.S.C. 1241, *et seq.*
National Wildlife Refuge System Administration Act, as amended—16 U.S.C. 668dd, 668ee
Wild and Scenic Rivers Act—16 U.S.C. 1271, *et seq.*
Wild Free-Roaming Horses and Burros Act—16 U.S.C. 1331, *et seq.*
Wilderness Act—16 U.S.C. 1131, *et seq.*
Wildlife Restoration Act—16 U.S.C. 669, *et seq.*
Clean Water Act, as amended—33 U.S.C. 1251, *et seq.*
Clean Air Act, as amended—42 U.S.C. 7401, *et seq.*
Comprehensive Environmental Response, Compensation, and Liability Act, as amended—42 U.S.C. 6911, *et seq.*
Resource Conservation and Recovery Act, as amended—42 U.S.C. 6901, *et seq.*
Safe-Drinking Water Act, as amended—42 U.S.C. 201, *et seq.*
Solid Waste Disposal Act, as amended—42 U.S.C. 6901, *et seq.*
Federal Land Policy and Management Act of 1976, as amended—43 U.S.C. 1701, *et seq.*
Public Lands Unlawful Enclosure Act—43 U.S.C. 1601, *et seq.*
Public Rangelands Improvement Act of 1978—43 U.S.C. 1901, *et seq.*
Taylor Grazing Act—43 U.S.C. 315, *et seq.*

References to the term "affected interests" have been removed throughout the rule and replaced with the term "interested public." The proposed rule would also remove the authorized officer's current discretion to determine whether an individual is an "affected interest." These changes were not included in the advance notice of proposed rulemaking.

The reason for the change is to provide a consistent standard for participation by the public. Any party who writes to the authorized officer to express concern for the management of livestock grazing on specific grazing allotments will be recognized as a member of the "interested public" under the proposed rule. This allows the BLM to develop a record to assure notification of proposed and final decisions and to involve the "interested public" in the consultation process.

Requirements for consultation with the interested public have been added in sections of the proposed rule that deal with the initial allocation of forage, development of activity plans and range improvement programs, the issuance or renewal of grazing permits or leases, and the establishment or adjustment of the terms and conditions of grazing permits and leases.

The advance notice of proposed rulemaking included provisions that would allow the authorized officer to issue final decisions without first issuing a proposed decision in specified circumstances. This proposed rule would carry forward the provision that the authorized officer could directly issue final decisions when decisions are necessary to protect rangeland resources from damage in "emergency" situations under section 4110.3–3(b), and would add that decisions to close areas to certain forms of livestock use when necessary to abate unauthorized use, as provided in section 4150.2(d), could be issued as final decisions without first issuing proposed decisions. The provisions are necessary to provide responsive action in these circumstances. The other circumstances specified in the advance notice that would not have required a proposed decision were nondiscretionary decisions, decisions that were previously part of a broader final decision that was initially issued as a proposed decision, and decisions that involve the application of discretion within the established terms and conditions of grazing permits and leases. These categories have been removed in this proposed rule. However, there may be circumstances where resource protection and administrative efficiency could be enhanced by avoiding the delay of implementation that occasionally can result from the protracted resolution of protests of proposed decisions. In all cases, the right to appeal final decisions to the Office of Hearings and Appeals would be retained. The public is invited to comment on whether there should be additional circumstances where the authorized officer should have the ability to issue final decisions without first issuing a proposed decision.

A new provision has been included in the proposed rule to eliminate the requirement for prolonged implementation of necessary reductions in permitted livestock use when data, including field observations, show grazing use or patterns of use are not consistent with standards and guidelines, are causing an unacceptable level or pattern of utilization, or grazing use exceeds the livestock carrying capacity of the area. Under the existing regulations, necessary reductions in livestock use of more than 10 percent have been phased in over a period of five years. Although that provision may, in the short term, mitigate some of the adverse effects on permittees and lessees, it has inhibited responsive action in situations where reductions in use are most needed. Under the proposed rule, the authorized officer, after consultation with the affected permittee or lessee, the State having lands or managing resources within the area, and the interested public, would take action to reduce grazing use either by reaching an agreement with the involved parties or by decision. The Department anticipates that, in many cases, agreements can be reached that would result in gradual reductions in use. However, the Department recognizes the need to provide for responsive action where rangeland health and function is not being maintained.

Other proposals within the category of administrative practice have been modified somewhat in response to comments received, while attempting to retain the general substance of the proposed actions. Also, an attempt has been made to clarify many of the explanations of proposals, and to refine the regulatory text to more accurately achieve the objective of the initial proposal.

Resource Management Requirements, Including Standards and Guidelines

Public comments on the standards and guidelines included as an appendix to the advance notice of proposed rulemaking generally expressed doubt that it is possible to develop a set of national standards and guidelines that could be universally applied to grazing administration on public lands. Many reviewers recommended that standards and guidelines should only be developed at a more local level. Many comments also expressed uncertainty regarding whether the standards and guidelines would have the effect of law given they were presented as an appendix rather than proposed regulatory text.

The Department agrees that standards and guidelines prepared at a more local level would be better tailored to fit resource conditions and livestock management practices. Therefore, the Department has not carried forward the standards and guidelines as included with the advance notice. However, in order to promote greater administrative consistency, and to focus management attention and resources where they will result in the greatest environmental benefit, the Department recognizes a need to establish clear national requirements for grazing administration and guidance for the preparation of State or regional standards and guidelines. These national requirements and guiding principles for State or regional standards and guidelines have been included in the text of this proposed rule. In addition, the Department recognizes the importance of putting standards and guidelines in place in a timely manner, and has provided a mechanism for doing so in this proposal.

The Department intends that State or regional standards and guidelines for grazing administration would be developed in consultation with multiple resource advisory councils, interested public, and others within 18 months following the effective date of the final rule. In the event State or regional standards and guidelines have not been completed and approved by the Secretary within 18 months of the effective date of the final rule, fallback standards and guidelines provided in this proposed rule would be implemented. The Department feels this provision for fallback standards and guidelines is needed to provide for necessary resource protection and to encourage prompt action toward the development of State or regional standards and guidelines. The fallback standards and guidelines would also provide a benchmark by which to measure the adequacy of State or regional standards and guidelines.

The national requirements, guiding principles for the development of State or regional standards and guidelines, and the fallback standards and guidelines proposed in this rule all focus on attaining and maintaining healthy rangeland ecosystems, including riparian areas. The Department recognizes that achieving and maintaining properly functioning ecosystems is critical to the protection of public rangelands and resources, and resource uses. Achieving and maintaining healthy rangeland conditions greatly benefits resources and uses such as wildlife and fish habitat, water quality, and recreational activities. Although BLM land use plans and activity plans may provide for achieving resource conditions that go beyond the benchmarks for ecological health and functional condition proposed in this rule, achieving properly functioning ecosystems is prerequisite to the conservation of rangeland resources.

The national requirements for all grazing-related plans and activities on public lands under this proposed rule include continuing or implementing grazing practices that maintain or achieve healthy, properly functioning ecosystems and riparian systems; continuing or implementing grazing practices that maintain, restore or enhance water quality and assist in the attainment of water quality that meets or exceeds State water quality standards; and continuing or implementing grazing management practices that assist in the maintenance, restoration, or enhancement of the habitat of threatened or endangered species, or species that are classified as candidates for threatened or endangered species listing. These requirements are intended to reflect the fundamental legal mandates for the management of public lands under the Taylor Grazing Act, FLPMA, Endangered Species Act, Clean Water Act (33 U.S.C. 1251 *et seq.*), and other relevant authorities. Where existing management practices fail to meet these national requirements, the BLM authorized officer would be required to take action as soon as practicable but not later than the start of the next grazing year. This would include actions such as reducing livestock stocking rates, adjusting the season or duration of livestock use, or modifying or relocating range improvements.

Standards and guidelines would be developed to provide further guidance, within the framework of the national requirements, in the administration of livestock grazing on public lands. Bureau of Land Management State Directors, in consultation with the affected multiple resource advisory councils, would be responsible for identifying the appropriate geographical area for which standards and guidelines would be developed. Standards and guidelines would be developed for an entire State or for an ecoregion encompassing portions of more than one State. Standards and guidelines would not be prepared for a smaller area totally within the boundaries of a single State except where the BLM State Director, in consultation with the multiple resource advisory councils, determines that the combination of the geophysical and vegetal character of an area is unique and the health of the rangelands within the area could not be adequately protected using standards and guidelines developed on a broader geographical scale. The intent of this limitation on the geographical scope of standards and guidelines is to provide for the development and application of uniform standards and guidelines across an area including public lands of similar character. This limitation would result in more consistent application of standards and guidelines, and would encourage collaboration between BLM offices, multiple resource advisory councils, and the public in addressing the resource management needs and concerns of an area. Standards and guidelines could be developed for ecoregions involving public lands within more than one State for the purpose of ensuring the consistent application of rangeland management measurements and practices across an identifiable ecoregion.

This proposed rule would establish guiding principles to be addressed in the development of standards and guidelines. The guiding principles represent what the Department has identified as the resource concerns and types of management practices that must be considered in the development of standards and guidelines. The guiding principles for the development of standards are intended to provide focus on riparian area function and the minimum soil and vegetation conditions required for rangeland ecosystem health. The guiding principles for the development of guidelines for grazing administration provide focus on the consideration of management practices that assist in or do not inhibit meeting certain legal mandates and achieving and maintaining rangeland health. Included in these guiding principles are the requirements that State or regional

guidelines address: grazing practices to be implemented to benefit threatened or endangered species and candidate species, and to maintain, restore or enhance water quality; critical periods of plant growth or regrowth and the need for rest from livestock grazing; situations in which continuous season-long grazing, or use of ephemeral rangelands, could be authorized; the allowable types and location of certain range improvements and management practices; and utilization or residual vegetation limits.

The BLM State Director, in consultation with multiple resource advisory councils, the interested public, and others, would be required to develop standards and guidelines that are consistent with the national requirements and the guiding principles. It is anticipated that there may be a need to add additional standards and guidelines consistent with the national requirements to reflect the State or regional resources, the character of the public lands, local livestock management practices, and community interests. For example, State or regional guidelines may specify limitations on the season of livestock use or thresholds for utilization by livestock in crucial big game winter ranges. Multiple resource advisory councils, and their rangeland resource teams and technical review teams, would play an important role in designing standards and guidelines to meet conditions and concerns encountered within the specific State or region by facilitating open discussion and ensuring that the views of all interested parties are considered in preparing their recommendations for the BLM. The BLM would not implement State or regional standards or guidelines developed pursuant to this proposed rule prior to their approval by the Secretary.

The proposed rule includes a provision for fallback standards and guidelines that would become effective 18 months after the effective date of the final rule in the event that State or regional standards and guidelines are not complete. The fallback standards and guidelines would remain in effect until State or regional standards and guidelines are completed and approved by the Secretary.

The fallback standards are largely based on indicators of soil stability and watershed function, distribution of nutrients and energy, and the ability of plant communities to recover. The three categories of indicators, when considered in combination, have been found to be key in assessing rangeland health. The standards are generally based on the findings of the Committee on Rangeland Classification presented in "Rangeland Health" (National Research Council 1994) and BLM's Riparian Area Management (TR1737–9, Process for Assessing Proper Functioning Condition, 1993). A fourth fallback standard addresses indicators of healthy flood plain structure and condition, a critical component of healthy rangeland ecosystems and riparian systems.

The fallback guidelines would restrict management practices to those activities that assist in or do not hinder meeting certain legal mandates and achieving or maintaining rangeland health. The fallback guidelines include the requirement that grazing management practices be implemented that assist in or do not hinder the recovery of threatened or endangered species, or assist in preventing the listing of species identified as candidates for threatened or endangered species. This guideline is intended to avoid the impacts associated with the listing of more species as threatened or endangered. A second guideline would require that grazing practices be implemented that would assist in attaining and protecting water quality consistent with the Clean Water Act. The fallback guidelines would also require that grazing schedules include periods of rest during times of critical plant growth or regrowth, and that continuous season-long grazing be limited to instances where it has been demonstrated that such use would be consistent with achieving or maintaining rangeland health and riparian functioning condition, and with meeting established resource objectives. Under the fallback guidelines, development of springs or other projects affecting water would be designed to protect the ecological values of the affected sites. Livestock management practices or management facilities such as corrals, pipelines, or fences, would generally be required to be located outside of riparian-wetland areas, and where standards for these areas are not being met, the facilities could be removed or relocated, or the management practices modified. The fallback guidelines would require the establishment and application of utilization or residual vegetation limits that would benefit the diversity and vigor of woody and herbaceous species, maintain healthy age-class structure in riparian-wetland and aquatic plant communities, and would leave sufficient biomass and plant residue to provide for sediment filtering, the dissipation of stream energy, and streambank stability and shading.

Finally, the fallback guidelines would require that allotment management plans and other activity plans addressing livestock grazing that are developed or amended after the fallback guidelines become effective specify desired plant communities, including minimum percentages of site vegetation cover, and incorporate utilization limits for both riparian and upland sites to assist in achieving or maintaining proper functioning condition.

The Department recognizes that the proposed fallback standards and guidelines may not fit all situations. A provision has been included in the proposed rule that would allow BLM State Directors to adjust the fallback standards and guidelines, subject to approval of the Secretary, to fit State or local conditions. However, in tailoring the fallback standards and guidelines to more local conditions, the BLM State Directors must ensure that the general purpose of each of the fallback standards and guidelines is met.

The national requirements proposed in this rule, and all standards and guidelines, whether fallback, State, or regional would be implemented subject to the National Environmental Policy Act of 1969 (42 U.S.C. 4331 *et seq.*; NEPA) and applicable land use planning regulations. The national requirements and guiding principles for State and regional standards and guidelines are analyzed in the draft EIS for Rangeland Reform '94. The fallback standards and guidelines are also analyzed in the draft EIS. Any additional NEPA analysis required during development of State or regional standards and guidelines would tier to the analysis of national requirements and standards and guidelines presented in the EIS for Rangeland Reform '94.

The BLM planning regulations direct that actions be in conformance with BLM land use plans. It is anticipated that in most instances, established standards and guidelines, and associated implementation actions, would be in conformance with existing land use plans, although in some cases land use plans may require modification.

It is the Department's intent to develop State or regional standards and guidelines, complete plan conformance tests, and undertake necessary plan amendments within 18 months of the effective date of the final rule. Development of the State or regional standards and guidelines and any plan amendments that are necessary would occur simultaneously. Thus, State or regional standards and guidelines would be implemented as they are finalized and approved by the Secretary.

If this has not occurred within 18 months of the effective date of the final rule, fallback standards and guidelines would be put in place until the State or regional standards and guidelines are completed. The Department envisions that all rangelands administered by the BLM under 43 CFR part 4100 would have enforceable standards and guidelines by the end of the 18-month period.

Implementation of the national requirements and the standards and guidelines for grazing administration would be accomplished by directing specific actions to promote or achieve the requirements and standards and guidelines. The specific actions needed to implement the requirements, standards, and guidelines would be incorporated in the terms and conditions of grazing permits and leases, and other grazing authorizations. Actions needed to implement the requirements, standards, and guidelines would also be incorporated in allotment management plans or other activity plans as they are prepared or amended.

The proposed rule would require that the authorized officer specify terms and conditions that would ensure conformance with the national requirements, standards, and guidelines in all grazing leases and permits. These terms and conditions would be added at the time of permit or lease issuance, including the transfer or renewal of permits or leases. However, where the authorized officer determines that the national requirements or established standards and guidelines are not being met under existing terms and conditions, the terms and conditions of grazing permits and leases and other grazing authorizations would be modified as soon as practicable, but not later than the start of the next grazing year.

Reflecting the national requirements and standards and guidelines in the terms and conditions of grazing permits and leases would provide the management mechanism to help achieve, to the extent practicable, healthy rangeland ecosystems. While grazing administration may not be the only factor affecting the health of rangeland ecosystems, it is the Department's intent to ensure improvement in the context of grazing management through the standards and guidelines for grazing administration.

The Department intends that all high priority grazing allotments would be reviewed for the need to modify terms and conditions to ensure conformance with the national requirements, and standards and guidelines within three years of the effective date of this rule. Priority would be based largely on the review of riparian area conditions. This review, in combination with incorporating terms and conditions reflecting the national requirements and standards and guidelines as permits and leases are issued, renewed or transferred, should ensure that a large portion of BLM grazing allotments would be protected by the national requirements and the standards and guidelines. The public is invited to provide comments and suggestions on the structure of the review of grazing allotments and the criteria for determining the priority of allotments to be reviewed.

SECTION-BY-SECTION ANALYSIS

Part 4 of Title 43—Department Hearings and Appeals Procedures

Section 4.477 Effect of Decision Suspended During Appeal

The proposed rule would revise the heading of this section to reflect that grazing decisions would no longer automatically be suspended when an appeal is filed as provided in the proposed revision of 43 CFR subpart 4160. The proposed rule would also remove other references to suspension of the decision of the authorized officer upon appeal.

Part 1780—Cooperative Relations

Section 1784.0–5 Definitions

The proposed rule would replace the term "authorized representative" with "designated Federal Officer" to make the terminology of the rule more consistent with the terminology of the Federal Advisory Committee Act and 41 CFR 101–6.1019.

Section 1784.2–1 Composition

This section would be amended to remove the eligibility requirement for grazing advisory board members. This requirement would no longer be necessary with the discontinuance of the grazing advisory boards. Composition for multiple resource advisory councils and their rangeland resource teams and technical review teams would be provided for in the specific sections of the proposed rule pertaining to such councils and teams.

Section 1784.2–2 Avoidance of Conflict of Interest

The proposed rule would clarify that permittees and lessees would be eligible for service on multiple resource advisory councils, rangeland resource teams, and technical review teams. This change is necessary to ensure that all stakeholders, including those with financial interests in the management of public lands, are able to provide input to multiple resource advisory councils so that resource advisory councils would be able to develop recommendations based on direct community and user input. The proposed rule would also provide that no advisory committee, rangeland resource team or technical review team member could participate in any matter in which such member is directly interested. Furthermore, members of multiple resource advisory councils would be required to disclose their direct or indirect interest in Federal grazing permits or leases administered by BLM.

Section 1784.3 Member Service

The proposed rule would establish that appointments to advisory committees would be for two-year terms unless otherwise specified in the charter. Specific references to grazing advisory board, district advisory council and National Public Lands Advisory Council appointments, terms and election procedures, would be removed. Advisory committees are established through individual charters or by statute. Membership requirements, terms of appointments and election procedures must be prescribed in these charters and are, therefore, not necessary in this proposed rule.

Also, the provisions for reimbursement of committee members' travel and per diem expenses would be modified to make clear that individuals selected by committees to provide input, but who themselves are not appointed committee members, shall not be eligible for reimbursement. Under the proposed rule the newly formed multiple resource advisory councils would play a greater role in advising BLM land managers than the district advisory councils and grazing advisory boards they generally replace. The Department expects that the expanded role of the councils would require more frequent council meetings, resulting in greater administrative, travel, and per diem expenses to be incurred by BLM. The provision that members of rangeland resource teams and technical review teams who are not also members of the parent advisory council would not be reimbursed for expenses is intended to limit the expenses to be incurred by the BLM. However, the limitation on reimbursements for travel and per diem could affect the ability of some persons to participate on the input teams. The public is asked to provide specific comments and suggestions on whether

this limitation is appropriate or how it might be modified.

Section 1784.5–1 Functions and Section 1784.5–2 Meetings

These sections would be amended by replacing the term "authorized representative" with the term "designated Federal officer." These changes provide consistency with the terminology of FACA.

Section 1784.6–1 National Public Lands Advisory Council, Reserved Sections 1784.6–2 and 1784.6–3, Section 1784.6–4 District Advisory Councils, and Section 1784.6–5 Grazing Advisory Boards

References to the National Public Lands Advisory Council, district advisory councils and grazing advisory boards are removed in their entirety and replaced with three new sections that would establish multiple resource advisory councils and associated input teams. Reserved sections 1784.6–2 and 1784.6–3 would be removed. The new sections are discussed separately below.

Section 1784.6–1 Multiple Resource Advisory Councils

This section would provide for the establishment of multiple resource advisory councils. One multiple resource council would be established for each BLM administrative district except when prohibited by factors such as limited interest in participation, geographic isolation in terms of proximity to users and public lands, or where the configuration and character of the lands is such that organization of councils along BLM district boundaries is not the most effective means for obtaining advice for the management of the ecosystems or resources of the area. The exceptions are intended to provide for situations such as those encountered in Alaska where it is difficult for interested persons to participate because of extreme travel distances, or situations where management of neighboring BLM districts or portions of districts involving similar lands and ecosystems can best be served by organizing a multiple resource advisory council along boundaries other than BLM district administrative boundaries. The determination of the area for which a multiple resource advisory council would be organized would be the responsibility of the affected BLM State Director. Organization by ecoregion boundaries would be encouraged where appropriate. The Governors of the affected States and established multiple resource advisory councils could petition the Secretary to establish a multiple resource advisory council for a specific BLM resource area.

Multiple resource advisory councils would provide advice to the Bureau of Land Management official to whom it reports regarding the preparation, amendment and implementation of land use plans. The councils would also assist in establishing other long-range plans and resource management priorities in an advisory capacity. The Department intends that this would include providing advice on the development of plans for range improvement or development programs and has included in the proposed amendments to 43 CFR subpart 4120 a requirement for consultation with multiple resource advisory councils in the planning of range improvement or development programs. Multiple resource advisory councils would not provide advice on personnel management, nor would they provide advice on the allocation and expenditure of funds subsequent to budget planning.

Appointments to multiple resource advisory councils would be made by the Secretary. In making appointments, the Secretary would consider nominations from the Governor of the affected State and nominations received in response to a public call for nominations. The Secretary would encourage Governors to develop their nominations through an open public process. In reviewing nominations submitted by the Governors, the Secretary would consider whether an open public process was used. All nominations would be required to be accompanied by letters of recommendation from interests or organizations to be represented that are located within the area for which a council is organized.

The Secretary would appoint 15 members to each multiple resource advisory council. Five members would be selected from persons representing commodity industries, developed recreational activities, or use of public lands by off-highway vehicles; five would be selected from representatives of nationally or regionally recognized environmental or resource conservation groups and wild horse and burro interest groups, from representatives of archeological and historical interests, and from representatives of dispersed recreational activities; and five would be selected from persons who hold State, county, or local elected office, and representatives of the public-at-large, Indian tribes within or adjacent to the area, natural resource or natural science academia, and State agencies responsible for the management of fish and wildlife, water quality, water rights, and State lands. The proposed rule would require that at least one of the members appointed to each council must hold elected State, county, or local office. An individual would not be allowed to serve on more than one multiple resource advisory council at any given time.

The proposed rule would require council members to have demonstrated experience or knowledge of the geographic area for which the council provides advice. The Department seeks comment as to the necessity of this requirement, particularly as it applies to experts.

For purposes of the multiple resource advisory councils, the Secretary would rely on the provisions of the current regulations found at 43 CFR 1784.3(f), governing the removal of advisory council members.

The proposed rule would require that all members of multiple resource advisory councils would attend a course of instruction in the management of rangeland ecosystems that has been approved by the BLM State Director. This requirement is intended to ensure a common general understanding of the resources management principles and concerns involved in management of the public lands. Public comment and suggestions are invited on the content and structure of this required training.

The proposed rule provides that an official meeting of a multiple resource advisory council requires at least three members from each of the three broad categories of interests from which appointments were made. Formal recommendations of the council would require agreement by at least three members of each of the three broad categories of interests that attend an official meeting.

Multiple resource advisory councils would be provided the option of requesting Secretarial review where the council believes its advice has been arbitrarily disregarded by the BLM manager. If requested, the Secretary would respond directly to a council's concerns within 60 days. Such a request would require agreement by all 15 members of the council. The Secretary's response would not constitute a decision on the merits of any issue that is or might become the subject of an administrative appeal and would not preclude an affected party's ability to appeal a decision of the authorized officer.

Section 1784.6–2 Rangeland Resource Teams

The proposed rule would provide for the formation of rangeland resource teams by a multiple resource advisory

council on their own motion or in response to a petition by local citizens. Rangeland resource teams would be formed for the purpose of providing local level input and serving as fact-finding teams for issues pertaining to grazing administration. Rangeland resource teams would provide input and recommendations to the multiple resource advisory council on public land grazing management issues within the area for which the rangeland resource team is formed. The geographical scope of a rangeland resource team would not exceed the area for which the advisory council provides advice. Rangeland resource teams organized under a multiple resource advisory council would not provide advice to the Federal land manager.

Rangeland resource teams would consist of five members selected by the multiple resource advisory council. Membership would include two persons holding Federal grazing permits or leases within the area for which the team is formed. Additional members would include one person representing the public-at-large, one person representing a nationally or regionally recognized environmental organization, and one person representing national, regional, or local wildlife or recreation interests. Members representing grazing permittees or lessees and the local public-at-large would be required to have resided within the area for which the team would provide advice for at least two years prior to their selection. Persons selected by the council to represent the public-at-large, environmental, and wildlife or recreation interests could not hold Federal grazing permits or leases. The proposed rule requires that at least one member of the rangeland resource team be selected from the membership of the parent multiple resource advisory council.

The multiple resource advisory council would be required to select rangeland resource team members from nominees that qualify by virtue of their knowledge or experience of the lands, resources, and communities that fall within the area for which the team is formed. All nominations for membership would be required to be accompanied by letters of recommendation from the local interests to be represented. The membership provisions are intended to ensure that rangeland resource teams are able to represent key stakeholders and interests in providing input to the more broadly organized multiple resource advisory councils.

The proposed rule would require that all members of rangeland resource teams would attend a course of instruction in the management of rangeland ecosystems that has been approved by the BLM State Director. The Colorado working group developed a proposal for a "Range Ecosystem Awareness Program" that would establish a basic curriculum that would include: basic rangeland ecology, human resource development, the relationship of public land resources to private lands and communities, and the pertinent laws and regulations affecting rangeland management. The Department intends to consider the Working Group's proposal in developing the curriculum for the training of rangeland resource team members and invites public comment and suggestions on the content and structure of this required training.

Rangeland resource teams would have opportunities to raise any matter of concern with the multiple resource advisory council and to request that the multiple resource advisory council form a technical review team, as described below, to provide information and options to the council for their consideration.

Although no specific provision has been made in the proposed rule, rangeland resource teams could petition the Secretary for chartered advisory committee status. Chartered rangeland resource teams would be subject to the general provisions of 43 CFR part 1780 and the provisions of the charter prepared pursuant to FACA.

Section 1784.6–3 Technical Review Teams

Under the proposed rule a multiple resource advisory council could establish technical review teams, as needed, in response to a petition of an involved rangeland resource team or on their own motion. Rangeland resource teams chartered under FACA could also establish technical review teams. Technical review teams would conduct fact finding and provide input to the parent multiple resource advisory council or chartered rangeland resource team. Their function would be limited to specific assignments made by the parent committee, and would be limited to the geographical scope and scope of management actions for which the multiple resource advisory council or chartered rangeland resource team provides advice. Technical review teams would terminate upon completion of the assigned task.

Members of technical review teams would be selected by the multiple resource advisory council or chartered rangeland resource team on the basis of their knowledge of resource management or their familiarity with the issues involved in the assigned task. At least one member of each technical review team would be required to be selected from the membership of the parent multiple resource advisory council or chartered rangeland resource team.

PART 4100—GRAZING ADMINISTRATION—EXCLUSIVE OF ALASKA

Subpart 4100—Grazing Administration—Exclusive of Alaska; General

Section 4100.0–2 Objectives

The proposed rule would amend the objectives statement for part 4100 by including as objectives the preservation of public land and resources from destruction and unnecessary injury, the enhancement of productivity for multiple use purposes, the maintenance of open spaces and integral ecosystems, and the maintenance of the stability of communities depending on the western livestock industry.

Section 4100.0–5 Definitions

The proposed rule would remove two definitions, add five new definitions, and revise 10 definitions in section 4100.0–5. Generally these amendments would reduce redundancy and make the definitions more concise, germane, and understandable. Several changes were made to the definitions presented in the advance notice of proposed rulemaking, most notably, the removal of the definition for "Affected interest" and replacement with the term "Interested public." This new term is used to recognize necessary public involvement in decisionmaking and to make 43 CFR part 4100 more consistent with other BLM rules and those of the Forest Service.

The proposed rule would redefine *Active use* to include conservation use and exclude nonuse or suspended use.

The proposed rule would add a definition of *Activity plan* to mean a plan for managing a use, or resource value or use, and would clarify that an AMP is one form of an activity plan.

The definition of *Actual use* would be revised to clarify that the term may refer to all or just a portion (e.g., a pasture) of a grazing allotment.

A new definition of *Affiliate* addresses the controlling interests of a permittee's business relationships. The term is used in determining whether applicants have satisfactory records of performance for receiving or renewing a permit or lease or in receiving

additional forage that becomes available for allocation to livestock grazing.

The definition of *Allotment management plan (AMP)* would be modified to describe more clearly the focus and purpose of the plan, and to make clear that an AMP is a form of activity plan.

A definition of *Conservation use* would be added to mean an activity for the purpose of protecting the land and its resources from destruction or unnecessary injury. The term would include improving rangeland conditions and the enhancement of resource values or functions.

The definition of *Consultation, cooperation and coordination* would be modified to reflect the proposed discontinuance of grazing advisory boards; to clarify that consultation, cooperation, and coordination apply to the development, revision, or termination of allotment management plans; and to include States having not only lands but also resource management responsibility (e.g., wildlife, water quality) in the subject allotment.

The proposed rule would redefine the terms *Grazing lease* and *Grazing permit* to clarify what forms of use are authorized in leases and permits and to clarify that the documents specify a total number of AUMs apportioned.

The definition of *Grazing preference* would be revised to mean the priority to have a Federal permit or lease for a public land grazing allotment that is attached to base property owned or controlled by a permittee or lessee, or applicant. The proposed revision would better match the language of section 3 of the Taylor Grazing Act of 1934. The definition would drop the reference to a specified quantity of forage, a practice that was adopted by the former Grazing Service during the adjudication of grazing privileges. Like the Forest Service, the BLM would identify the amount of grazing use (AUMs), consistent with land use plans, in grazing use authorizations to be issued under a lease or permit.

A definition of *Interested public* would be added to mean an individual, group or organization that has submitted written comments to the authorized officer regarding the management of livestock grazing on specific grazing allotments.

The definition of *Land use plan* would be revised to remove the inference that all management framework plans would be replaced by resource management plans.

A definition of *Permitted use* would be added to define the amount of forage in an allotment that is allocated for livestock grazing and authorized for use, or included as suspended nonuse, under a grazing permit or lease. The definition was added to those included in the advance notice of proposed rulemaking. The term replaces the animal unit months of forage use previously associated with grazing preference.

The definition of *Range improvement* would be expanded to include protection and improvement of rangeland ecosystems as a purpose of range improvements.

The definition of *Suspension* would be revised to reflect the revision of the definition of the term "preference." The term "preference" would be replaced with "permitted use."

A definition of *Temporary nonuse* would be added to refer to permitted use that may be temporarily made unavailable for livestock use in response to a request by the permittee or lessee.

The term *Unauthorized leasing and subleasing* would be defined to mean leases or other agreements that have not been approved by the authorized officer.

The definition of *Utilization* would be amended to mean the consumption of forage by all animals consistent with the definitions in the BLM Technical Reference 4400–3 and the Bureau Manual System for Inventory and Monitoring.

Section 4100.0–7 Cross-References

This section would be amended to guide the public to the applicable sections of the 43 CFR part 4 when considering an appeal of a decision relating to grazing administration, and to 43 CFR part 1780 regarding advisory committees.

Section 4100.0–9 Information Collection

This section would be added to conform to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The section discloses to the public the estimated burden hours needed to comply with the information collection requirements in this proposed rule, why the information is being collected, and what the information will be used for by the BLM.

Subpart 4110—Qualifications and Preference

Sections 4110.1 Mandatory Qualifications

Although most applicants for grazing use would be engaged in the livestock business, the proposed rule would clarify that mortgage insurers, natural resource conservation organizations, and private parties whose primary source of income is not the livestock business, could meet the criteria for qualification for a grazing permit or lease.

The proposed rule would add requirements that applicants for the renewal or the issuance of new grazing permits or leases, and any affiliates, must be determined by the authorized officer to have a satisfactory record of performance based on specified standards. Applicants for renewal must be determined to be in substantial compliance with the terms and conditions of the expiring permit or lease. In assessing whether an applicant for renewal is in substantial compliance, the authorized officer would consider the number of prior incidents of noncompliance with the requirements of 43 CFR part 4100, as well as the nature and seriousness of any single incident of noncompliance.

The proposed rule would deny a new permit or lease to those applicants who have had Federal grazing leases or permits, or State grazing permits or leases within the Federal grazing allotment for which application is made, canceled due to violations of terms or conditions during the 36 months preceding application. Applicants and their affiliates that have been barred from holding a Federal grazing permit or lease by court order would also be determined to be disqualified.

The provisions pertaining to disqualification include changes made to the provisions of the advance notice of proposed rulemaking. Restricting the scope of consideration of the applicant's history of performance under State leases to those State lands located within the Federal grazing allotment boundary for which application is made is intended to reduce the workload associated with obtaining and reviewing State records. Also, the inability of the applicant to make use of State lands within the Federal grazing allotment would often inhibit the orderly administration of the Federal permit or lease.

The advance notice of proposed rulemaking provided for disqualification on the basis of suspension or cancellation of certain permits or leases. Under the proposed rule, suspension of grazing permits or leases, in whole or in part, would not result in disqualification.

The provisions for disqualification would also affect the allocation of increased forage under §§ 4110.2–3 and 4110.3–1 and conflicting applications under § 4130.1–2. These three sections reference "qualified applicants."

The amendments pertaining to the disqualification of applicants are

intended to reflect the requirements of the Taylor Grazing Act and FLPMA that public lands be managed in a way that protects them from destruction or unnecessary injury and provides for orderly use, improvement, and development of resources, as well as provisions for renewing permits and leases except where violations of rules and regulations and terms and conditions of the permit or lease have occurred.

Section 4110.1–1 Acquired Lands

The proposed rule would revise this section to clarify that existing grazing permits and leases on lands acquired by the BLM are subject to the permit or lease terms and conditions that were in effect at the time of acquisition. Upon expiration of the preexisting permit or lease, grazing management of the acquired lands would become subject to the provisions of 43 CFR part 4100.

Section 4110.2–1 Base Property

This section would be amended by clarifying that base property is required to be capable of serving as a base for livestock operations but it need not be used for livestock production at the time the authorized officer finds it to be base property. A provision has been added to the amendments presented in the advance notice to make clear that the permittee's or lessee's interest in a base water previously recognized as base property shall qualify as base property. Where authorized water developments on public lands that have been previously recognized as base property require reconstruction or replacement in order to continue to service the same area, and the reconstructed or new development has been authorized through a range improvement permit or cooperative range improvement agreement, the permittee's or lessee's interest in the new or reconstructed water development would be recognized as base property.

Section 4110.2–2 Specifying Grazing Preference

This section would be renamed "Specifying permitted use" to reflect the redefinition of the term "grazing preference," and would be amended to replace the term "grazing preference" with "permitted use." Also, the section would be amended to clarify that levels of grazing use on ephemeral or annual ranges are established on the basis of the amount of forage that is temporarily available pursuant to vegetation standards prescribed by land use plans or activity plans.

Section 4110.2–3 Transfer of Grazing Preference

This section would be amended to reflect the new requirements of § 4110.1–1 pertaining to the applicant's history of performance and by adding a new paragraph (f) to require that new permits or leases stemming from transfer of the base property be for a minimum time period of three years. These provisions are necessary to provide for stability in meeting the objectives of these regulations for protection and improvement of the rangelands and resources and to reduce the administrative work in processing transfers. Currently about 1,850 of the BLM leases or permits, approximately 10 percent of the total number, involve leased base property.

Section 4110.2–4 Allotments

This section would be amended to clarify that designation and adjustment of allotment boundaries include the authority for, and the practice of, combining or dividing allotments when determined by the authorized officer to be necessary to achieve resource condition objectives or to enhance administrative efficiency. This section includes changes in addition to those presented in the advance notice of proposed rulemaking to clarify that modification of allotments must be done through agreement or decision of the authorized officer, and to make clear that the interested public would be involved in the designation or adjustment of allotment boundaries.

Section 4110.3 Changes in Permitted Use

This section would be amended by replacing the term "grazing preference" with "permitted use," and by clarifying that changes in permitted use shall be supported by monitoring data, field observations, land use planning decisions, or data collected through other studies. This section includes changes made in addition to those presented in the advance notice of proposed rulemaking.

Section 4110.3–1 Increasing Permitted Use

This section would be revised by including the requirement that a permittee or lessee, or other applicant has been determined to be qualified under subpart 4110, by substituting the term "permitted use" in place of "grazing preference," and by clarifying the requirements for consultation. Also, reference to a permittee's or lessee's demonstrated stewardship would be added to factors to be considered in allocating available forage. This section includes changes made in addition to those presented in the advance notice of proposed rulemaking.

Section 4110.3–2 Decreasing permitted grazing use

This section would be amended by revising the heading, revising paragraph (b) to expand the list of methods for determining when a reduction in grazing use is necessary, and by deleting paragraph (c). The amendment would add to monitoring ecological site inventory and other recognized methods for determining forage production as methods of identifying when use exceeds the livestock carrying capacity of the area considered. The amendment would also add a reference to national requirements and standards and guidelines. Under this section the authorized officer would be required to take or approve corrective action when grazing use or patterns of use result in less than properly functioning conditions of the ecosystem, as established by the proposed national requirements and standards and guidelines and identified through monitoring or field observations, or when use exceeds the livestock carrying capacity. The BLM Technical Reference 4400–5 (Rangeland Inventory and Monitoring Supplemental Studies) describes acceptable methodologies for estimating forage production. The revised section would allow the use of other acceptable methods to estimate rangeland carrying capacity to be used as the basis for making initial adjustments in grazing use. Subsequent adjustments could be made as monitoring data are collected and analyzed. The amendment would therefore allow more responsive action when use or patterns of use result in a failure to meet resource condition objectives.

This section includes changes made in addition to those presented in the advance notice of proposed rulemaking.

Section 4110.3–3 Implementing reductions in Permitted Use

The proposed rule would rename the section, would remove existing paragraph (a) and other requirements for phased-in reductions in grazing use, and would amend existing paragraph (b) to remove the terms "consultation, coordination and cooperation," and "suspension of preference" and add in their place the terms "consultation" and "reductions in grazing use," respectively, and provide, by way of reference to § 4110.3–2, for the application of national requirements and standards and guidelines and the use of other methods, in addition to

monitoring, for determining the need for an initial reduction. The change in the heading is intended to describe the section more accurately. The removal of existing paragraph (a) and other requirements for phased reductions in use would allow more responsive correction of situations where grazing use exceeds carrying capacity. Removing the phased implementation requirement would not prohibit agreements or decisions that would allow phased reductions in use. The cross reference to other methods of estimating forage production and identifying and the use of monitoring or field observations to identify when grazing use or patterns of use are not consistent with the national requirements or standards and guidelines, or grazing use is otherwise causing an unacceptable level or pattern of utilization, would also allow more responsive action to improve the rangeland condition. The Department does not intend that extended monitoring would be necessary to begin needed adjustment of use. The removal of the term "coordination and cooperation" would result in a more precise statement of the requirements placed on the authorized officer. The statutory requirement of FLPMA (43 U.S.C. 1752), as amended by section 8 of the Public Rangelands Improvement Act of 1978, for consultation, coordination, and cooperation applies to the development, revision, and termination of allotment management plans. Existing paragraph (c) would be redesignated as paragraph (b) and would be amended to remove the word "temporary" because it implies only one season while the influences of natural events such as drought could significantly affect vegetation health and productivity for several months or years after a drought has passed. Other minor amendments clarify the action of the field manager and retain the special provisions for making "emergency" decisions effective. This section includes changes made in addition to those presented in the advance notice of proposed rulemaking.

Section 4110.4–2 Decrease in Land Acreage

The proposed rule would amend paragraph (a) by removing the words "suspend" and "suspension." As explained above, reductions in authorized use under preference permits or leases would no longer be recognized as suspended use.

Subpart 4120—Grazing Management

Section 4120.2 Allotment Management and Resource Activity Plans

The proposed rule would amend this section by revising the heading and by adding reference to other activity plans that may prescribe grazing management. It has been the BLM's policy to develop more integrated activity plans for managing resources of an allotment, such as coordinated resource management plans. The BLM strongly favors the development of integrated activity plans over single purpose plans such as allotment management plans (AMPs) because integrated plans allow BLM, permittees or lessees, and other affected persons to take a broader look at all of the management needs of an area while still addressing actions specific to the various uses and resource conditions of the area. The proposed rule would clarify that draft AMPs, or other draft activity plans, may be prepared by other agencies, or permittees or lessees. In addition to the initial proposal in the advance notice, a provision has been made for the preparation of draft allotment management plans by other interested parties. Allotment management plans or other activity plans would not become effective until approved by the authorized officer. Paragraph (a) would be amended by replacing the reference to district grazing advisory boards with multiple resource advisory councils and including State resource management agencies in the activity planning process as explained above. The amendment would also provide that plans shall include standards and guidelines that are not included as terms and conditions of the permit or lease. The amendment would provide that flexibility granted to permittees or lessees under a plan shall be determined on the basis of demonstrated stewardship. The requirement for earning flexibility is an incentive for cooperating grazing operators to manage for the improvement of rangeland conditions. The proposed rule would make the inclusion of other than public lands in an allotment management plan or other activity plan a discretionary action as opposed to a requirement as worded in the existing regulations. Finally, this section would reference the NEPA analysis and related public participation that is required for the planning and revision of allotment or activity plans, and would provide that the decision document following the environmental analysis would serve as the proposed decision for purposes of subpart 4160.

Section 4120.3–1 Conditions for Range Improvements

This section would be amended by inserting a new paragraph (f) addressing reviews of decisions associated with range improvement projects. The amendment clarifies the process for administering protests and appeals of the decision and directs appeals through the administrative remedies process (43 CFR part 4160) provided for in grazing administration. At present, appeals of these decisions regarding range improvements go to the Interior Board of Land Appeals without an opportunity for a local field hearing on the facts of the case as is the practice with other rangeland grazing program decisions.

Section 4120.3–2 Cooperative Agreements

The section heading would be revised to clarify that this section deals with cooperative range improvements as opposed to "cooperative agreements" with other Federal or State agencies. The proposed rule would amend this section to make it clear that the United States would have title to all new permanent grazing-related improvements constructed on public lands. Title to temporary grazing-related improvements used primarily for livestock handling or water hauling could be retained by the permittee or lessee. This change conforms with the common practice of keeping title of permanent improvements in the name of the party holding title to the land. The amendment would not change the agreements currently in effect.

Section 4120.3–3 Range Improvement Permits

This section would be amended to make it clear that a permittee or lessee may apply for a range improvement permit to install, use, maintain, or modify range improvement projects, whether permanent or temporary, needed to meet management objectives established for the allotment. The permittee would hold title to removable livestock handling facilities and to temporary improvements such as troughs for hauled water or loading chutes. The amendment would also clarify that permanent water improvement projects would be authorized through cooperative range improvement agreements. The proposed rule would remove the provision that permittees or lessees would control the use of ponds or wells by livestock. Permittees and lessees would be the graziers and, therefore, would control livestock use of water sources. The proposed amendment will not affect

ownership or rights currently held in a range improvement.

A provision was added to those presented in the advance notice to make clear that the authorized officer would retain a record of permittee or lessee contributions to specific authorized range improvement projects. This record would be used in determining compensation due the permittee or lessee from the BLM in the event a permit or lease is canceled in order to devote the public lands to another public purpose, including disposal of the lands. The record would also be considered prior to the transfer of grazing preference.

The rule would provide for the BLM to mediate disputes about reasonable compensation for the operation and maintenance of facilities when another operator is authorized temporary use of forage that the preference permit holder cannot use.

Section 4120.3–8 Range Improvement Fund

The proposed rule would add a new section to this part that addresses the distribution and use of the "range betterment" funds appropriated by Congress through section 401(b) of FLPMA for range improvement expenditure by the Secretary of the Interior. The range betterment fund has been called the range improvement appropriation by Congress and is known by that title in the BLM. The proposed amendment would provide for distribution of the funds by the Secretary or designee. The proposed rule would provide that one-half of the range improvement fund would be made available to the State and District from which the funds were derived. The remaining one-half would be allocated by the Secretary or designee on a priority basis. All range improvement funds would be used for on-the-ground rehabilitation, protection and improvements of public rangeland ecosystems. Current policy requires the return of all range improvement funds to the District from which they were collected. The BLM has found this not to be in the best interest of the public because it prevents use of the funds in areas where they are most needed and results in some offices experiencing difficulty expending available funds efficiently. The proposed amendment would correct the imbalance by ensuring that the funds are distributed on a priority basis.

The proposed rule would clarify that range improvement includes activities such as planning, design, layout, modification, and monitoring/evaluating the effectiveness of specific range improvements in achieving resource condition and management objectives. Maintenance of range improvements and costs associated with the contracting of range improvement was added to the list of activities included in the advance notice of proposed rulemaking for which range improvement funds may be used. Maintenance was an allowable use of range improvement funds prior to a policy change made in 1982.

The proposed rule would require consultation with affected permittees, lessees, and the interested public during the planning of range development and improvement programs. Multiple resource advisory councils would also be consulted during the planning of range development and improvement programs, including the development of budgets for range improvement and the establishment of range improvement priorities.

Section 4120.3–9 Water Rights for the Purpose of Livestock Grazing on Public Lands

This section was added in response to comments on language pertaining to water rights that was presented in the advance notice. This section would provide consistent direction for the BLM regarding water rights on public lands for livestock watering purposes. Under the proposed rule, any new rights to water on public land for livestock watering on such land would be acquired, perfected, maintained, and administered under State law, and in the name of the United States unless State law prohibits it.

The proposal would not create any new Federal reserved water rights, nor would it affect valid existing water rights. Any right or claim to water on public land for livestock watering on public land by or on behalf of the United States would remain subject to the provisions of 43 U.S.C. 666 (the McCarran Amendment) and section 701 of FLPMA (43 U.S.C. 1701 note; disclaimer on water rights). Finally, the proposal would not change existing BLM policy on water rights for uses other than public land grazing, such as irrigation, municipal, or industrial uses.

Section 4120.5 Cooperation in Management

The proposed rule would add a new section on cooperation in management to recognize and regulate cooperation with, among others, State, county, Indian tribal, local government entities and Federal agencies.

Section 4120.5–1 Cooperation With State, County, and Federal Agencies

This section would recognize existing cooperation with State cattle and sheep boards, county and local noxious weed control districts, and State agencies involved in environmental, conservation, and enforcement roles related to these cooperative relationships. The Taylor Grazing Act, Noxious Weed Control Act, FLPMA, Public Rangeland Improvement Act (43 U.S.C 1901 *et seq.*), and other statutes and agreements require cooperation with State, county and local governments, and Federal agencies.

Subpart 4130—Authorizing Grazing Use

Section 4130.1 Applications

This section would make it clear that applications must contain the proposed active grazing use, temporary nonuse, and conservation use. This amendment is proposed to end confusion about the "failure to use" provisions of subpart 4170. The inadvertent loss of permitted use or preference due to punitive action in response to failure to make use is easily avoided by applying for nonuse and receiving approval from the authorized officer.

Section 4130.1–1 Changes in Grazing Use

This section would provide for field managers to make temporary changes in authorized use, either increases or decreases, not to exceed 25 percent of the authorized use or 100 AUMs, whichever is greater, following consultation with the affected permittees or lessees and the State having land or responsibility for resources management within the allotment. This would provide latitude to the authorized officer for authorizing minor or incidental adjustments in grazing use without extensive consultation, simplifying day-to-day administration. The provision for 25 percent or 100 AUMS, whichever is greater, is intended to specify what constitutes minor or incremental adjustments. The Department proposes the 100 AUM limitation to provide sufficient latitude in cases where minor adjustments, in terms of the total amount of forage, would constitute a large percentage of the permitted use (i.e., small permits or leases). Changes of a temporary nature could be made in a timely manner when the proposed changes conform with the applicable land use plan and standards and guidelines, and are within the terms and conditions of the existing permit or lease. Examples of the types of changes

that would be considered under this section are the activation of previously approved temporary nonuse, placing permitted use in temporary nonuse, and the use of forage temporarily available on ephemeral or annual ranges.

Section 4130.1–2 Conflicting Applications

This section would be amended by adding criteria to be considered in granting a use authorization or permit or lease. The proposed rule would incorporate the history of applicants' and affiliates' compliance with the terms and conditions of Federal and State grazing permits and leases and demonstrated stewardship of the public lands as criteria for granting permits or leases where there is more than one qualified applicant.

Section 4130.2 Grazing Permits or Leases

The permit and lease tenure proposals included in the advance notice of proposed rulemaking have not been carried forward. Public comment on the advance notice suggested the permit and lease tenure provisions would result, among other things, in severe limitations on the ability of prospective permittees and lessees to secure financing for the purchase and operation of ranches. Under this proposed rule, permits and leases would continue to be offered for 10-year terms except in specified circumstances.

The proposed rule would clarify that all grazing permits and leases issued, including the transfer or renewal of permits and leases, would include terms and conditions addressing the national requirements and standards and guidelines proposed under subpart 4180, as well as terms and conditions establishing allowable levels, seasons and duration of use, and other terms and conditions that would assist in achieving management objectives, provide for proper range management, or assist in the orderly administration of the public rangelands. Terms and conditions reflecting the national requirements proposed under subpart 4180 would begin being incorporated in grazing permits and leases as permits and leases are issued, including transfer or renewal, upon the effective date of the rule. Standards and guidelines for grazing administration would be reflected in the terms and conditions of grazing permits and leases upon their completion or, in the absence of the completion of State or regional standards and guidelines, as the fallback standards and guidelines presented in section 4180.2 of this proposed rule become effective.

A new paragraph has been added in addition to those presented in the advance notice to make clear the requirements for consultation with interested parties prior to the issuance or renewal of grazing permits and leases.

The provision of the advance notice that would prevent the renewal of permits and leases when the permittees or lessees are found to be in repeated noncompliance with the terms and conditions of expiring grazing permits or leases has been removed from this section. Section 4110.1—Mandatory qualifications, would require that applicants for renewal must be determined to be in substantial compliance with the terms and conditions of their grazing permit or lease. In assessing whether an applicant for renewal is in substantial compliance, the authorized officer would consider the number of prior incidents of noncompliance with the requirements of 43 CFR part 4100, as well as the nature and seriousness of any single incident of noncompliance. Therefore, a separate provision in this section is deemed to be unnecessary.

The provision of the advance notice that applicants for renewal would be required to be found to not be in violation of the provisions of 43 CFR part 4100 has been removed. Section 4170.1–1—Penalty for violations, in the existing regulations provides for withholding issuance of permits and leases when applicants are in violation of the provisions of this part.

The provision of the advance notice that would prohibit the offer or grant of permits and leases when the applicant refuses to accept the terms and conditions of the offered permit or lease has been amended to clarify that it would apply to applicants for renewal and new permits and leases.

The proposed rule clarifies the application for and granting of conservation use and temporary nonuse. Conservation use would be established as one of the allowable uses a permittee or lessee may be granted. The existing regulations grant the authorized officer the discretion to place forage in nonuse for conservation purposes. The change from the term "nonuse for conservation purposes" to "conservation use" is intended to clarify that conservation use is allowable, when in conformance with applicable land use plans, activity plans and standards and guidelines, and will allow the Department to fulfill one of the requirements of the Taylor Grazing Act, which is to "preserve land and its resources from destruction or unnecessary injury" (43 U.S.C. 315a).

Forage made available as a result of temporary nonuse may be authorized for temporary use by another operator. Forage used for conservation purposes would not be available to other livestock operators. The procedures guiding approval of nonuse are proposed in response to a recommendation from the March 19, 1986, Inspector General's review of the grazing management program.

Section 4130.4–1 Exchange-of-Use Grazing Agreements

This section would include needed requirements that the agreements for exchange of use will be in harmony with management objectives, and will be compatible with existing livestock operations. The agreements would be required to address the fair sharing of maintenance and operation of range improvements and would be approved for the same term as any leased lands that are offered.

Section 4130.4–3 Crossing Permits

This section would provide for terms and conditions for crossing permits, a form of temporary use authorization. The proposed amendments are consistent with the customary practices of BLM field offices.

Section 4130.5 Ownership and Identification of Livestock

This section would be amended to make it clear that, before grazing livestock owned by persons other than the permittee or lessee, the permittee or lessee is required to have an approved use authorization and have submitted a copy of the documented agreement or contract that includes information required for the BLM's administration of permits and leases and management of rangeland resources. This generally does not create a new requirement. Many field offices are currently requiring the information to document the legality of the pasturing of livestock owned by persons other than the permittees.

In addition to the proposals of the advance notice, this proposed rule would add an exemption from some of the requirements for ownership of livestock for sons and daughters of permittees or lessees in specified circumstances. This modification is necessary to allow the exemption of sons and daughters, who are grazing livestock on public lands under their parents' permit or lease in specified circumstances, from the authorized leasing or subleasing surcharge provided in § 4130.7.

Section 4130.6–1 Mandatory Terms and Conditions

This section would be amended through minor additions and deletions that clarify that use shall not exceed the livestock carrying capacity of the allotment, and by removing unnecessary references to previous sections. The section would be further amended to add a paragraph (c) that would require that standards and guidelines be reflected in the terms and conditions of permits and leases.

Section 4130.6–2 Other Terms and Conditions

This section would be amended to provide for proper rangeland management and to remove unnecessary language. The proposed amendment would allow terms and conditions to provide for improvement of riparian area functions and for protecting other rangeland resources and values consistent with applicable land use plans. The amendments are consistent with the themes of protection, improvement, and restoration of the rangelands to increase overall productivity, and will enhance multiple-use management as required by the applicable laws cited above. The addition of paragraph (h), a provision affirmatively stating that BLM shall have administrative access across the permittee's or lessee's owned or leased private lands, is intended to address attempts made to prevent the BLM from performing functions such as range use supervision, compliance checks, and trespass abatement.

Section 4130.6–3 Modification

The proposed rule would amend this section to clarify consultation requirements in the modification of terms and conditions of permits. The amendment would identify the opportunity to be provided the public for review and comment, or to give input, during the evaluation of monitoring results or other data that provide a basis for decisions regarding grazing use or management.

Section 4130.7–1 Payment of Fees

The proposed rule would amend this section by revising the grazing fee formula, adding a provision for phasing in the grazing fee over the years 1995 through 1997, providing for an adjustment of the fee formula in the event separate final regulations prescribing qualification criteria for an incentive-based fee are not completed, and providing for a 25 percent cap on changes in the calculated fee from year to year. The section would be further amended to make clear the definition of a billing unit, to provide for assessing a surcharge for the public landlord's share of authorized subleasing associated with Federal land grazing, to provide for multi-year billing in specified circumstances to reduce administrative workload associated with small grazing allotments, to clarify that grazing use that occurs before a bill is paid is an unauthorized use and may be dealt with under the settlement and penalties sections of these regulations and may result in the limitation of flexibility authorized under an allotment management plan, and to provide for free use where the primary objective of livestock use is to benefit resource conditions or management, such as scientific study or the control of noxious weeds. The advance notice of proposed rulemaking proposed to phase in the grazing fee over the grazing years of 1994 through 1996. This proposed rule would also phase in the revised grazing fee, but the initial phase would begin with grazing year 1995.

The proposed amendment of the grazing fee formula has been prepared in cooperation with the Forest Service. In reviewing potential modification of the grazing fee formula the BLM and Forest Service identified criteria by which any new fee proposal should be measured. Those criteria are:

1. The fee charged for livestock grazing should approximate market value. Using market value helps assure that the public receives a fair return for the private use of publicly owned resources.

2. The fee should not cause unreasonable impacts on communities that are not economically diverse or to livestock operations that are greatly dependent on public land forage.

3. The grazing fee should recover a reasonable amount of government costs involved in administering grazing permits and leases and should provide increased funds to improve ecological conditions.

4. The fee system should be understandable and reasonably easy to administer.

The present fee system, in effect since 1978, has been controversial and criticized for the wide disparity between rates charged for livestock grazing on private lands and those charged for Federal lands. While the forage value in the private market increased substantially over time, the Federal grazing fee has decreased during some periods or had relatively small increases.

The proposed fee system would use a base value adjusted annually by the change in the private grazing land lease rate. The proposed base value was derived by using data from two different studies. The first study is the 1966 Western Livestock Grazing Survey (WLGS), where over 10,000 individuals were interviewed to determine the costs of operating on Federal lands, as compared to operating on private land leases. Information on the private grazing land lease rate was also collected. The WLGS determined that the westwide value for grazing Federal lands equalled $1.23 per AUM for 1966. This value is updated to a 1991 base value of $3.25 per AUM by multiplying $1.23 by 264, the percentage change in the private grazing land lease rate from the base years 1964–1968, and dividing by 100.

The second study is the 1983 appraisal of the value of grazing on the BLM and Forest Service lands in the 16 western States. This appraisal involved interviews with approximately 100,000 persons and generated 7,246 usable records of fees paid for livestock grazing. The appraisal divided the 16 western States into 6 pricing regions.

The appraisers concluded that the value of public land grazing ranged from $4.68 per head month (equivalent to BLM's AUM for billing purposes) in the southwest pricing region to $8.55 per head month in the northern plains pricing region. In 1992, the appraisal was updated, based on additional data for private grazing lease rates gathered during 1991. The update found no change in the $4.68 per head month value of grazing in the southwest pricing region, and found an increase to $10.26 per head month in the northern plains pricing region. The $4.68 appraisal value is the lowest of the appraised values and is considered a reasonable amount on which to base a westwide fee. Using the lowest of the appraised values would minimize the impact on livestock grazing permittee.

This proposed rule would establish a new base value of $3.96 per AUM by averaging the results of the two studies ($3.25 plus $4.68 divided by 2 equals $3.96). By averaging these two values the base value is established in consideration of the economic value of the forage and costs of production. After an initial phase-in period, the fee would be adjusted annually by multiplying the base value by the Forage Value Index (FVI), which reflects the change in the private grazing land lease rate in the 17 western States weighted by the number of public AUMs sold in each State. The private grazing land lease rate estimate is prepared annually by the USDA, National Agricultural Statistics Service. Although the FVI does not explicitly use indices based on production costs or on the value of the livestock produced,

both of these factors influence the prices paid for grazing livestock on private lands and, therefore, are implicit in the forage value index.

The definition of the FVI in this proposed rule has been changed from the definition presented in the advance notice of proposed rulemaking. In the advance notice the FVI was to be calculated by dividing the prior year weighted average AUM price on private grazing lands in the 17 western States by the weighted average AUM price on private grazing lands in the 17 western States during the years 1990 through 1992. That method would have established 1990 through 1992 as the base years from which the Federal grazing fee would be indexed. Beginning in 1994, the FVI would have been used to calculate the Federal grazing fee under the advance proposal. In this proposed rule, the concept of the FVI has been retained but the FVI base year would be 1996 and the FVI would not be used to calculate the Federal grazing fee until 1997.

The intent of this change in the FVI base year is to address the concern that the FVI calculation proposed in the advance notice would have resulted in adjusting the Federal grazing fee by several years' worth of change in private grazing land lease rates, resulting in an uncertain and possibly significant jump or drop in the calculated fee. Under this proposed rule the FVI would first be used in calculating the 1997 grazing fee and would be based on the 1996 private grazing land lease rates in each of the 17 western States. By definition, the FVI in the year 1997 would equal one, resulting in a 1997 grazing fee equal to the base value. In subsequent years the fee would reflect changes from the 1996 private grazing land lease rates. The Department recognizes that basing the FVI in a single year, as opposed to the three year average presented in the advance notice, could result in slightly greater volatility in the index. However, the Department feels this potential volatility in the index, given the relative stability in the private grazing land lease rates and the limitation on annual fluctuations discussed below, is overshadowed by the need to avoid some of the uncertainty associated with an FVI based on less current data.

The grazing fee charged in 1994 is $1.98 per AUM. Under this proposed rule the formula would result in a grazing fee in 1997 of $3.96. The fee would be phased-in by establishing the 1995 grazing fee at $2.75, and the 1996 fee at $3.50. Thereafter, except as explained below, the fee would be calculated by multiplying the $3.96 base value by the FVI. After the phase-in, the grazing fee would be allowed to change by no more than 25 percent annually, plus or minus, from the amount charged the previous year. The phase-in and the 25 percent per year limit are intended to moderate the impact of fee changes on livestock operations and ranching communities.

Two provisions have been added to the proposed rule regarding incentive-based grazing fees. First, the proposed rule provides for a 30 percent reduction in the grazing fee to those permittees and lessees who meet the applicable eligibility criteria to be established in a separate rule. Second, the proposed rule provides that if separate final regulations necessary to implement the incentive-based fee are not issued prior to the start of grazing fee year 1997, implementation of the $3.96 base value would be delayed. The Department believes that a 30 percent reduction in the grazing fee would be a valuable tool in promoting good stewardship. However, the effectiveness of this incentive would rest on the criteria for qualification. These criteria would focus primarily upon those permittees and lessees who agree to participate in special rangeland improvement programs characterized by best management practices, the furtherance of resource condition objectives, and comprehensive monitoring. The Department has not found general agreement on the criteria necessary to qualify for the fee reduction and, accordingly, has decided to consider that aspect of the incentive-based fee through a separate rulemaking. The proposed delay in implementation of the $3.96 base value, in the event that final rule on these criteria has not been issued, is intended to demonstrate the Department's commitment to expeditious implementation of the incentive-based fee. The Department anticipates that eligibility criteria would require the permittee or lessee to undertake management practices beyond those otherwise required by law and regulation to benefit the ecological health of the public rangelands.

In the absence of completed regulations establishing the criteria for qualification for the reduced fee, and beginning in the grazing fee year 1997, a base value of $3.50 would be substituted in the formula. The $3.50 base value would continue until such time as the incentive-based fee regulations are completed. This provision would not affect the phase-in of the fee in the grazing fee years 1995 and 1996, or the 25 percent cap on annual changes in the calculated fee.

The proposed rule would provide for collecting a surcharge for certain authorized leasing and subleasing activities associated with a Federal permit or lease attached to base property. It would retain the provision for legal transfer of base leases and permits and the pasturing of livestock owned by persons other than the permittee or lessee.

The initial proposal in the advance notice has been modified to exclude from the surcharge sons and daughters of permittees or lessees grazing livestock on public lands as part of an educational or youth programs pertaining to livestock rangeland management, or when establishing a livestock herd in anticipation of assuming part or all of the family ranch operation. This change was made in recognition of the public concern that the surcharge could unduly restrict opportunities for young persons learning or entering the livestock business.

The issue of subleasing or pasturing livestock owned by others in connection with public land grazing permits or leases has been controversial and there has been much concern expressed in the West by the livestock industry and conservation organizations, alike. The concern is easily understood when one considers that past Federal grazing fees have been sufficiently low as to present opportunities for substantial profit when a permittee or lessee pastures another party's livestock or leases the base property. Also, the short-term nature of agreements for pasturing livestock owned by persons other than the permittee or lessee presents less incentive for stewardship of the land.

In developing an approach to address these concerns the BLM queried departments responsible for the management of State lands in most of the western States to determine how they were addressing this issue and if they were collecting a share of the lease or service fees being charged. The BLM found that most of the States that allow subleasing or pasturing of livestock owned by persons other than the permittee or lessee require the payment of a service fee or surcharge, or a portion of the amount in excess of the State's rental fee.

Under the proposed rule the Department would recognize two types of authorized leasing or subleasing. The first is the lease or sublease of public land grazing privileges associated with the base property. Such a lease or sublease would be authorized so long as the associated base property is leased or subleased together with the public land grazing privileges and the BLM authorized officer approves the arrangement. The second is a pasturing

agreement under which livestock not owned by the permittee or lessee but under the control of the permittee or lessee is allowed to graze on the permit or lease area. In order to be authorized, such a lease or sublease arrangement would require approval of the BLM authorized officer. Other types of subleasing arrangements would be unauthorized.

The Department is proposing to charge a surcharge of 20 percent on all grazing fee billings for the authorized lease or sublease of public land grazing privileges associated with base property. An analysis of the costs and prices indicates that a 20 percent surcharge as applied by the State of New Mexico, the lowest of the States charging for subleasing, would be appropriate and is consistent with the approach used by other western States.

The Department also proposes to follow the example of the western States subleasing charges to establish a surcharge for authorized leasing or subleasing arrangements constituting pasturing agreements, as described above. The Department proposes a surcharge of 50 percent for the forage used in pasturing livestock owned by other than the permittee or lessee under a BLM permit or lease where the livestock is under the control of the BLM permittee or lessee. This figure is comparable to the $1.00 per AUM sublease fee charged by the State of Utah and would capture the typically larger profit associated with pasturing livestock. The surcharge would be 70 percent of the grazing bill when there is both an authorized lease or sublease of grazing preference and an authorized pasturing agreement. Sons and daughters of permittees and lessees would be provided with an exemption from the surcharges under circumstances specified in the rule.

The proposed rule includes a provision for multiple-year billing of grazing fees. This provision was not included in the advance notice of proposed rulemaking. It has been added in response to preliminary analyses of Rangeland Reform '94 that suggested a need to identify further opportunity for reductions in administrative expense and staffing needs. The proposed rule would allow the authorized officer to approve advance billing for up to 5 years where agreed to by the permittee or lessee and where annual authorized livestock use does not exceed 200 AUMs. At the end of the billing period or prior to any termination or transfer of the permit or lease, a separate billing would be issued to reconcile amounts owed or overpaid as a result of changes in the grazing fee. This provision focuses on smaller public land leases that result in disproportionately high administrative costs. Multiple-year billing would free limited staff and resources to work on higher priority resource concerns.

The new provisions for free use provide for the authorized officer to approve free use under limited circumstances. Under this section, free use could be permitted where the primary objective of authorized grazing use or conservation use is the management of vegetation to meet resource objectives other than the production of livestock forage, to conduct scientific research or administrative studies, or to control noxious weeds.

Section 4130.7–2 Incentive-Based Grazing Fee Reduction

Existing §§ 4130.7–2 and 4130.7–3 would be redesignated as §§ 4130.7–3 and 4130.7–4, respectively, and a new section 4130.7–2 would be added to provide for the calculation of the incentive-based grazing fee and the criteria for qualifying for the fee reduction.

This section would provide for a 30 percent reduction in the grazing fee where the criteria for qualification are met. However, the criteria for qualification are not included in this proposed rule. The Department intends to use its best efforts to complete a separate rule that will establish the criteria prior to the start of the 1996 grazing fee year, and has reserved a paragraph for the criteria in this proposed rule.

This section would provide that the incentive-based fee for qualifying applicants in the grazing year 1996 would be calculated by multiplying the base value of $3.96 times 0.70 (70 percent). This would yield a 1996 incentive-based fee of $2.77. Beginning in grazing fee year 1997, the incentive-based fee would be calculated by multiplying the base value of $3.96 times the FVI and 0.70. This calculation would again yield an incentive-based fee of $2.77 for the grazing fee year 1997 because the FVI, by definition, would equal one for grazing fee year 1997. In subsequent years the incentive-based fee would fluctuate in keeping with changes in the private grazing land lease rate as reflected by the FVI. Yearly increases and decreases would be limited to no more than 25 percent of the incentive-based fee in the prior year.

This section would include a paragraph reserved for the qualification criteria that will be developed in a separate rulemaking.

Section 4130.7–4 Service Charge

Section 4130.7–3 would be amended by redesignating the section as § 4130.7–4, and by adding applications that are made solely for temporary nonuse or conservation use. The service fee would offset the costs of processing such applications.

Subpart 4140—Prohibited Acts

Section 4140.1 Prohibited Acts on Public Lands

Paragraph (a)(2) of this section would be amended to end misunderstandings about approved temporary nonuse and failure to make substantial use as authorized. Once temporary nonuse is approved, it becomes an authorized action and is therefore not subject to penalty action under § 4170.1. Other proposed amendments to this section would clarify paragraph (b)(1) to establish that the receipt of a grazing fee bill does not authorize grazing use of the range until the bill is paid. Paragraph (b)(9) would be amended to make it clear that the permittee is responsible for controlling livestock so they do not stray on to "closed to range" areas where grazing is prohibited by local laws, such as "formally designated agriculture districts" or municipalities. To be consistent with the Forest Service this section would restore two provisions that existed in this subpart prior to 1984. These provisions would make subject to penalty permittee or lessee violations of the Wild and Free Roaming Horse and Burro Act of 1971, the Endangered Species Act, and Federal or State laws or regulations concerning pest or animal damage control, and conservation or protection of natural and cultural resources or environmental quality when public lands are involved or affected. Under § 4170.1–3, no action could be taken in response to violations of State and Federal laws pertaining to pest or animal damage control, and conservation or protection of natural and cultural resources or environmental quality unless the permittee or lessee is convicted or otherwise determined by the appropriate authority to have been in violation, and there are no outstanding appeals.

Several changes were made in addition to those presented in the advance notice of proposed rulemaking to enable BLM law enforcement personnel to assist in protection of authorized use of the public lands and to clarify the various acts committed against grazing animals. In addition some changes have been made to make clear that attempted payment by a check that is not honored by the bank does not

constitute payment and would result in unauthorized use, and to provide for reclamation of lands, property or resources when damaged by unauthorized use or actions.

A list of the types of violations of Federal and State laws and regulations concerning pest or predator control and conservation or protection of natural and cultural resources or the environment that would be prohibited acts where public lands are involved or affected has been added in this proposed rule. This change was made in response to comments on the advance notice of proposed rulemaking that suggested that this provision needed to be more explicit.

Subpart 4150—Unauthorized Grazing Use

Section 4150.1 Violations

This section would be reorganized for readability and to add the requirement that the authorized officer shall determine whether a violation is nonwillful, willful, or repeated willful to clarify subsequent sections of the rule.

Section 4150.2 Notice and Order To Remove

This section would be amended to grant the authorized officer authority and provide for determining if a nonwillful violation is incidental in nature, and to clarify actions for expedient resolution of these innocent or unintended trespasses. The ability to close areas for a period of up to 12 months to specified class and kinds of livestock for the sole purpose of abating unauthorized use was added in addition to the changes presented in the advance notice of proposed rulemaking. Reference to the agents of livestock owners has also been added. These changes will facilitate the process of identifying and removing unauthorized livestock from public rangelands.

Section 4150.3 Settlement

This section would be amended to provide guidelines for considering nonmonetary settlement that waives fees for unintentional incidental trespasses in a fair manner while preventing needless expense in the best interest of the public. Key provisions of determination would be: the operator is not at fault, an insignificant amount of forage is consumed, no damage occurred, and nonmonetary settlement is in the best interest of the United States. The method for determining the settlement amounts would be amended to base the value of forage on the monthly rate per AUM for pasturing livestock on private, nonirrigated land in the 17 western States. This section includes changes made in addition to those presented in the advance notice of proposed rulemaking to reduce the potential for abuse of discretion by clarifying when a nonmonetary settlement for nonwillful violations may be made.

Subpart 4160—Administrative remedies

Section 4160 Administrative Remedies

The proposed rule would amend this section to improve organization, clarify the process and requirements, and to provide for application of the Departmental rule located at section 4.21 of this title regarding full force and effect decisions and petitions for staying the effect of a decision pending determination on appeal.

Section 4160.1 Proposed Decisions

This section would be amended to provide clarification that a final decision may be issued without first issuing a proposed decision when action under paragraph 4110.3–3(b) of this part is necessary to stop resource damage, or when action is taken under paragraph 4150.2(d) to close an area to unauthorized grazing use. This proposed amendment does not limit appeal rights provided in § 4160.3. It would serve to expedite the decision process where immediate action is necessary.

This section includes changes made in addition to those presented in the advance notice of proposed rulemaking to clarify, primarily, what information must be contained in a proposed decision.

Section 4160.3 Final Decisions

This section would be amended to clarify the process for filing an appeal and a petition for a stay of the decision. Under the proposed rule, decisions would be implemented at the end of the 30-day appeal period except where a petition for stay has been filed with the Office of Hearings and Appeals, in which case the Office of Hearings and Appeals has, under § 4.21 of this title, a period of 45 days from the end of the appeal period in which to decide on the petition for stay. This process would temporarily stay the decision up to 75 days if a stay is not granted. A stay, if granted, would suspend the effect of the decision pending final disposition of the appeal. Under the present grazing administration appeals process, decisions other than those pertaining to emergency action are automatically stayed upon the timely filing of an appeal. This has resulted in delays of up to two years before necessary corrective action can be taken.

This proposal would protect the public's rights to an appeal and would provide a method for staying decisions where the Office of Hearings and Appeals determines it would be appropriate to do so. At the same time this section would prevent unnecessary delays in action. The advance notice stated that when no protest is received on a proposed decision it shall become the final decision and will be appealable for a period of 30 days. Clarification of the wording relating to this point in the advance notice of proposed rulemaking has been made in this proposed rule.

The proposed revisions would make 43 CFR part 4100 more consistent with the Department's § 4.21 of this title. Several changes were made in addition to those presented in the advance notice of proposed rulemaking to make clear how the Departmental rule would apply.

The proposed rule also clarifies the amount of grazing use that would be allowable when a decision has been stayed by the Office of Hearings and Appeals or by order of a Federal Court. Where an appellant had no authorized grazing use the preceding year, the authorized grazing use would be required to be consistent with the decision pending a final determination on appeal. Appellants affected by this provision would include persons that are applicants for permit or lease transfers. Where a decision proposes to change the amount of authorized grazing use, the permitted grazing use would remain at no more than the appellant's previously determined permitted use during the time an appeal is pending. Reference to ephemeral use has been added to the amendments included in the advance notice of proposed rulemaking which pertain to levels of use pending determination on appeal. This amendment would provide for making decisions immediately effective when it is necessary to protect the rangeland resources or to facilitate abatement of unauthorized use by closing an area to grazing use under sections 4110.3–3 and 4150.2 of this part.

Section 4160.4 Appeals

This section would be amended to make it clear that any party whose interest is adversely affected may appeal the final decision of the authorized officer. The amendment would also provide instructions regarding the filing of appeals and petitions to stay decisions. When a final decision is issued, all parties whose interests have

been adversely affected may file an appeal and a petition for stay of the decision within 30 days from the date of receipt of a final decision, or 30 days from the date a proposed decision becomes final in the absence of a protest. Under the process of § 4.21 of this title, the Office of Hearings and Appeals would be allowed 45 days from the end of the appeal period to review the petition and issue a determination. A decision would not be in effect during the consideration of a petition for stay unless it was made effective for reasons under § 4110.3–3(b) or 4150.2(d) of this subpart. The determination of who qualifies as an affected party is made by OHA.

This section includes changes made in addition to those presented in the advance notice of proposed rulemaking, including a requirement for prompt transmittal by the authorized officer of appeals and petitions for stay to the Office of Hearings and Appeals.

Subpart 4170—Penalties

Section 4170.1–1 Penalty for Violations

This section would be amended to provide for a penalty for unauthorized leasing and subleasing in the amount of two times the private grazing land lease rate for the 17 western States as supplied annually by the National Agricultural Statistics Service, and all reasonable expenses incurred by the United States in detecting, investigating, and resolving the violation. This penalty would be more consistent with the penalties provided for unauthorized use and would be simpler to administer than the penalty provided in the existing regulations. This provision was not included in the advance notice of proposed rulemaking.

Section 4170.1–2 Failure to Use

This section would be amended to clarify the consultation requirements when considering taking action to cancel, in whole or in part, a permit or lease in response to failure to use, and to clarify that the failure to make substantial grazing use as authorized means the failure to make active grazing use as approved on a grazing use authorization. Permittees and lessees would be required to apply and receive approval for nonuse or conservation use. This section also would include failure to maintain or use water base property in the grazing operation. The failure to make authorized use may result in monitoring studies providing false information which could cause decisions to overobligate the forage resource of the rangeland. The failure to apply for conservation use or nonuse prevents the BLM from having an opportunity to determine if conservation use or nonuse is in conformance with applicable plans and if it will aid in achieving resource condition objectives. Review by the authorized officer of applications for nonuse is also necessary to determine if forage left unused should be allocated to another party through a temporary permit. Finally, water property is crucial to the proper use and operation of livestock grazing in water base areas. If base property waters are not kept in serviceable condition, livestock are forced to overuse the service areas of the remaining waters.

Section 4170.1–3 Bald Eagle Protection Act and Endangered Species Act

The proposed rule would amend this section to include Federal or State predator animal and pest control and protection of the natural environment, wild free-roaming horses and burros, natural and cultural resources, or resource conservation regulations or laws. The heading of this section would be amended to reflect the change in scope. These proposed amendments are also made in the section on prohibited acts, § 4140(b) of this part, and discussed earlier. The proposed amendments would adopt language of the grazing administration regulations that existed before 1984.

Section 4170.2–2 Penal Provisions Under the Federal Land Policy and Management Act

The proposed rule would amend this section to adopt the alternative fines provisions of title 18 U.S.C. 3571, current language that has been enacted since enactment of FLPMA to strengthen the protection of natural or cultural resources.

Subpart 4180—National Requirements and Standards and Guidelines for Grazing Administration

This subpart would be added to establish national requirements for the administration of grazing on public lands. It would also include a provision for the development of State or regional standards and guidelines for grazing administration. These requirements, standards, and guidelines are proposed to establish clear direction for managing rangelands in a manner that would achieve or maintain ecological health, including the protection of habitats of threatened or endangered species and candidate species, and the protection of water quality.

Section 4180.1 National Requirements for Grazing Administration

This new section would establish national requirements for grazing administration on public rangelands. The national requirements would include the requirement for maintaining or achieving healthy, properly functioning ecosystems and riparian areas and instituting measures to further the purposes of the Clean Water Act (33 U.S.C. 1251 *et seq.*) and the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*). All grazing-related actions on public lands would be required to conform with the national requirements. Where the national requirements are not being met, the authorized officer would be required to take corrective action prior to the start of the next grazing season. This would include actions such as reducing livestock stocking rates, adjusting the season or duration of livestock use, or modifying or relocating range improvements.

Nothing in the national requirements relating to riparian systems would be construed to create a water right based on Federal law.

Section 4180.2 Standards and Guidelines for Grazing Administration

This new section would establish the requirements for the development of standards and guidelines, and guiding principles for the development of standards and guidelines for grazing administration on public lands. All grazing related actions within the affected area would be required to conform with the standards and guidelines. The geographical area to be covered by the standards and guidelines developed pursuant to this section would be determined by the BLM State Director. Standards and guidelines would be required to be developed for an entire State, or for an ecoregion including portions of more than one State, except where the geophysical or vegetal character of an area is unique and the health of the rangelands could not be ensured by using standards and guidelines developed for a larger geographical area. The preparation of standards and guidelines would involve public participation and consultation with multiple resource advisory councils, Indian tribes, and Federal agencies responsible for the management of lands within the affected area. Public participation would include the involvement of the interested public.

The proposed rule would establish guiding principles to be addressed in the development of standards and guidelines. The guiding principles for

standards to be developed pertain to the minimum soil, water and vegetation conditions required for rangeland ecosystem health. All standards for grazing administration would be required to address factors relating to soil stability and watershed function, the distribution of nutrients and energy, and the recovery mechanisms of plant communities and riparian functioning conditions. The proposed guiding principles for the development of guidelines for grazing administration pertain to the types of management actions necessary to ensure that the standards can be met. Included in these guiding principles are the requirements that State or regional guidelines address grazing practices to be implemented to benefit threatened or endangered species and candidate species, and to maintain, restore or enhance water quality; critical periods of plant growth or regrowth and the need for rest from livestock grazing; situations in which continuous season-long grazing, or use of ephemeral rangelands, could be authorized; the allowable types and location of certain range improvements and management practices; and utilization or residual vegetation limits.

The proposed rule provides that where State or regional standards and guidelines are not developed within 18 months of the effective date of the proposed rule, fallback standards and guidelines included in the text of the rule would be implemented. The fallback standards address the same factors relating to soil stability and watershed function, the distribution of nutrients and energy, the recovery mechanisms of plant communities, and riparian functioning condition as provided for under the guiding principles. However, the fallback standards include more detail as to the conditions that would exist under each of the factors when rangelands are in healthy, functional condition. Under the fallback standards, rangelands would be measured against benchmarks for the presence and development of top soils, evidence of active soil erosion, distribution of plants and nutrients in both space and time, distribution of plant litter, rooting throughout the available soil profile, the growth forms of plants, plant vigor, the presence of a range of age classes for the vegetation on site, presence and development of flood plains, and channel sinuosity, width-to-depth ratio, and gradient in relation to the landscape setting. Individual sites may be in healthy, functional condition even though they do not meet all of these measures; however, the Department feels that generally failing to meet the benchmarks across an area the size of a typical grazing pasture or allotment would be reliable evidence that the specific area is not in healthy, functional condition.

Fallback guidelines for grazing administration would restrict management practices to those activities that assist in or do not hinder meeting certain legal mandates and achieving or maintaining rangeland health. The fallback guidelines address the same types of actions and practices that are considered under the guiding principles for the development of State or regional guidelines, but present these actions and practices as guidance for management. The fallback guidelines include the requirement that grazing management practices be implemented that assist in or do not hinder the recovery of threatened or endangered species, or assist in, or do not hinder, preventing the listing of species identified as candidates for threatened or endangered species. The fallback guidelines would also require that grazing practices be implemented that would assist in attaining and protecting water quality consistent with the Clean Water Act. Other fallback guidelines would require that grazing schedules include periods of rest during times of critical plant growth or regrowth, limit the authorization of continuous season-long grazing to instances where it has been demonstrated to be consistent with achieving or maintaining rangeland health and meeting established resource objectives. Spring developments or other projects affecting water would be required to be designed to protect the ecological values of the affected sites. Livestock management practices or management facilities would generally be required to be located outside of riparian-wetland areas, and where standards for these areas are not being met, the facilities could be removed or relocated, or the management practices modified. The fallback guidelines would also require the establishment and application of utilization or residual vegetation targets.

Fallback standards and guidelines could be tailored by the BLM State Director better to fit local ecosystems and management practices. Modifications of the fallback standards and guidelines would require the approval of the Secretary.

Standards and guidelines would be adhered to in the development of grazing-related portions of activity plans, and would be reflected in permits and leases as terms and conditions. Where data, including field observations, found acceptable to the authorized officer indicate that the standards and guidelines are not being met, the authorized officer would be required to take appropriate action, such as adjusting numbers, seasons, or duration of use by livestock, or modifying other management practices or range improvements, as soon as practicable but not later than the start of the next grazing year. Standards and guidelines would not be implemented prior to approval by the Secretary.

The principal author of this proposed rule is George W. Ramey, Range Conservationist, BLM Washington Office (WO) Division of Rangeland Resources, assisted by other members of the WO Division of Rangeland Resources, numerous BLM field office personnel, personnel from the Washington Office and various field offices of the Forest Service, and Mark W. Stiles of the BLM WO Division of Legislation and Regulatory Management.

The BLM and the Forest Service, as a cooperating agency, are preparing a draft environmental impact statement (EIS) on rangeland reform as announced in the **Federal Register** on July 13, 1993, and August 13, 1993. A notice of availability of the draft EIS will be published in the **Federal Register**. The draft EIS will invite public comment. Following the comment period on the draft EIS, a final EIS will be developed.

This rule has been reviewed under Executive Order 12866.

The Department has prepared an initial Small Entities Flexibility Assessment analyzing the economic impact of this rulemaking on small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. 605 *et seq.*). The initial assessment found that although some marginally profitable small livestock businesses that are highly dependent on public land grazing could experience significant economic impacts, most small businesses, organizations, and governments would not experience significant economic effects. The initial assessment is available at the address provided above.

This proposed rule has been reviewed under Executive Order 12630, the Attorney General Guidelines, Department of the Interior Guidelines, and the Attorney General Supplemental Guidelines to determine the takings implications of the proposed rule if it were promulgated as currently drafted. Because the relevant statutes and regulations governing grazing on Federal land and case law interpreting said statutes and regulations have consistently recognized grazing on Federal land as a revocable license and not a property interest, it has been

determined that this proposed rule does not present a risk of a taking.

The Department has certified to the Office of Management and Budget that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

The collections of information contained in this rule have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.* and assigned clearance numbers: 1004–0005, 1004–0019, 1004–0020, 1004–0041, 1004–0047, 1004–0051, and 1004–0068.

Public reporting burden for the information collections are as follows: clearance number 1004–0005 is estimated to average 0.33 hours per response, clearance number 1004–0019 is estimated to average 0.33 hours per response, clearance number 1004–0020 is estimated to average 0.33 hours per response, clearance number 1004–0041 is estimated to average 0.25 hours per response, clearance number 1004–0047 is estimated to average 0.25 hours per response, clearance number 1004–0051 is estimated to average 0.3 hours per response, and clearance number 1004–0068 is estimated to average 0.17 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing the burden to the Information Collection Clearance Officer (873), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004–0005, 1004–0019, 1004–0020, 1004–0041, 1004–0047, 1004–0051, or 1004–0068, Washington, DC 20503.

List of Subjects

43 CFR Part 4

Administrative practice and procedure, Civil rights, Claims, Equal access to justice, Government contracts, Grazing lands, Indians, Interior Department, Lawyers, Mines, Penalties, Public lands, Surface mining

43 CFR Part 1780

Administrative practice and procedure, Advisory committees, Land Management Bureau, Public lands

43 CFR Part 4100

Administrative practice and procedure, Grazing lands, Livestock, Penalties, Range management, Reporting and record keeping requirements

For the reasons stated in the preamble and under the authority of 43 U.S.C. 1201, the Federal Advisory Committee Act (5 U.S.C. Appendix), section 2 of the Reorganization Plan No. 3 of 1950 (5 U.S.C. Appendix), the Taylor Grazing Act of 1934 (43 U.S.C. 315 *et seq.*), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), and the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 *et seq.*), it is proposed to amend part 4 of subtitle A of title 43 and part 1780, group 1700, subchapter A and part 4100, group 4100, subchapter D of chapter II of subtitle B of title 43 of the Code of Federal Regulations as set forth below:

PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

1. The authority for 43 CFR part 4 continues to read as follows:

Authority: R.S. 2478, as amended, 43 U.S.C. sec. 1201, unless otherwise noted.

Subpart E—Special Rules Applicable to Public Land Hearings and Appeals

2. The authority citation for subpart E of part 4 continues to read as follows:

Authority: Sections 4.470 to 4.478 also issued under authority of sec. 2, 48 Stat. 1270; 43 U.S.C. 315a.

3. Section 4.477 is amended by revising the heading, removing paragraph (a), removing the paragraph designation from paragraph (b), and revising the first sentence of the paragraph to read as follows:

§ 4.477 Effect of decision during appeal.

Notwithstanding the provisions of § 4.21(a) of this part and consistent with the provisions of § 4160.3 of this title, the authorized officer may provide in his decision that it shall be in full force and effect pending decision on an appeal therefrom. * * *

PART 1780—COOPERATIVE RELATIONS

4. The authority citation for part 1780 continues to read as follows:

Authority: 5 U.S.C. Appendix I, 43 U.S.C. 1701 *et seq.*

Subpart 1784—Advisory Committees

§ 1784.0–5 [Amended]

5. Section 1784.0–5 is amended by removing from paragraph (d) the term "Authorized representative" and adding in its place the words "Designated Federal officer".

6. Section 1784.2–1 is amended by removing paragraph (b), redesignating paragraph (c) as paragraph (b), and revising the newly redesignated paragraph (b) to read as follows:

§ 1784.2–1 Composition.

* * * * *

(b) Individuals shall qualify to serve on an advisory committee because their education, training, or experience enables them to give informed and objective advice regarding an industry, discipline, or interest specified in the committee's charter; they have demonstrated experience or knowledge of the geographical area under the purview of the advisory committee; and they demonstrated a commitment to collaborate in seeking solutions to resource management issues.

7. Section 1784.2–2 is amended by revising paragraphs (a)(1), and (b), and by adding a new paragraph (c) to read as follows:

§ 1784.2–2 Avoidance of conflict of interest.

(a) * * *

(1) Holders of grazing permits and leases may serve on advisory committees, including multiple resource advisory councils, and may serve on rangeland resource teams and technical review teams;

* * * * *

(b) No advisory committee member, including members of multiple resource advisory committees, and no member of a rangeland resource team or technical review team, shall participate in any matter in which the member has a direct interest.

(c) Members of multiple resource advisory councils shall, at a minimum, be required to disclose their direct or indirect interest in Federal grazing permits or leases administered by the Bureau of Land Management. For the purposes of this paragraph, indirect interest includes holdings of a spouse or a dependent child.

8. Section 1784.3 is amended by removing paragraph (a), (b)(3), (b)(4), (b)(5), (c), (d) and (g); redesignating paragraphs (b)(1) and (b)(2) as paragraphs (a)(1) and (a)(2), respectively; adding introductory text to newly redesignated paragraph (a); removing from newly redesignated paragraph (a)(1) the word "district" and adding in its place the words "geographical area"; removing paragraph (b) and redesignating paragraphs (e) and (f) as paragraphs (b) and (c), respectively; removing the words "his authorized representative" from newly redesignated paragraph (c) and adding in its place the words "the designated Federal officer"; and adding a new paragraph (d) to read as follows:

§ 1784.3 Member service.

(a) Appointments to advisory committees shall be for 2-year terms unless otherwise specified in the charter or the appointing document. Terms of service normally coincide with duration of the committee charter. Members may be appointed to additional terms at the discretion of the authorized appointing official.

* * * * *

(d) For purposes of compensation, members of advisory committees shall be reimbursed for travel and per diem expenses when on advisory committee business, as authorized by 5 U.S.C. 5703. Except for members of a multiple resource advisory committee who are also resource or technical review team members as provided in §§ 1784.6–2 and 1784.6–3, no reimbursement shall be made for expenses incurred by teams or individuals selected by established committees for the purpose of providing input.

9. Sections 1784.5–1 and 1784.5–2 are amended by removing the term "authorized representative" and adding in its place the term "designated Federal officer", and removing the word "his" and adding in its place the word "the".

§§ 1784.6–4 and 1784.6–5 [Removed]

10. Sections 1784.6–4 and 1784.6–5 are removed.

11. Section 1784.6 is revised to read as follows:

§ 1784.6 Membership and functions of multiple resource advisory councils, rangeland resource teams, and technical review teams.

12. Section 1784.6–1 is revised to read as follows:

§ 1784.6–1 Multiple resource advisory councils.

(a) One multiple resource advisory council shall be established for each Bureau of Land Management administrative district except when the relevant Bureau of Land Management State Director determines one or more of the following conditions exist:

(1) There is insufficient interest in participation to ensure that membership can be fairly balanced in terms of the points of view represented and the functions to be performed;

(2) The location of the public lands with respect to the population of users and other interested parties precludes effective participation; or

(3) The configuration and character of the public lands and resources, and the juxtaposition of these lands and resources to affected communities, are such that a separate multiple resource advisory council for each Bureau of Land Management district in which the lands are situated is not the most effective means for obtaining consensual advice for the management of ecosystems and resources present, in which case a multiple resource advisory council may be established to correspond with ecoregion boundaries. The Governor of the affected States or existing multiple resource advisory councils may petition the Secretary to establish a multiple resource advisory council for a specified Bureau of Land Management resource area.

(b) A multiple resource advisory council advises the Bureau of Land Management official to whom it reports regarding the preparation, amendment and implementation of land use plans for public lands and resources within its area. Except for the purposes of long-range planning and the establishment of resource management priorities, a multiple resource advisory council shall not provide advice on the allocation and expenditure of funds. A multiple resource advisory council shall not provide advice regarding personnel actions.

(c) The Secretary or designee shall appoint 15 members to serve on each multiple resource advisory council. The Secretary or designee shall appoint at least one elected State, county or local government official to each council. An individual may not serve concurrently on more than one multiple resource advisory council.

(1) 5 members of each council shall be appointed from nominees who:

(i) Hold Federal grazing permits or leases within the area for which the council is organized;

(ii) Represent interests associated with transportation or rights-of-way;

(iii) Represent developed outdoor recreation, off-highway vehicle users, or commercial recreation activities;

(iv) Represent timber harvest; or

(v) Represent energy and mineral development.

(2) 5 members of each council shall be appointed from nominees representing:

(i) Nationally or regionally recognized environmental organizations;

(ii) Dispersed recreational activities;

(iii) Archeological and historical interests; or

(iv) Nationally or regionally recognized wild horse and burro interest groups.

(3) 5 members of each council shall be appointed, except as provided in paragraph (c) of this section, from nominees that:

(i) Hold State, county or local elected office;

(ii) Are employed by the State agency responsible for the management of fish and wildlife;

(iii) Are employed by the State agency responsible for the management of water quality;

(iv) Are employed by the State agency responsible for water allocations or the establishment of priorities for use of ground water;

(v) Are employed by the State agency responsible for the management of State lands;

(vi) Represent Indian tribes within or adjacent to the area for which the council is organized;

(vii) Are employed as academicians in natural resource management or the natural sciences; or

(viii) Represent the affected public-at-large.

(4) In appointing members of a multiple resource advisory council from the 3 categories set forth in paragraphs (c)(1), (c)(2), and (c)(3) of this section, the Secretary or designee shall provide for balanced and broad representation from within each category.

(d) In making appointments to multiple resource advisory councils the Secretary shall consider nominations made by the Governor of the State or States affected and nominations received in response to public calls for nominations pursuant to § 1784.4–1. Persons interested in serving on multiple resource advisory councils may nominate themselves. All nominations shall be accompanied by letters of reference from interests or organizations to be represented that are located within the area for which the specific council is organized.

(e) Persons appointed to multiple resource advisory councils shall attend a course of instruction in the management of rangeland ecosystems that has been approved by the responsible Bureau of Land Management State Director.

(f) A multiple resource advisory council shall meet at the call of the designated Federal officer and elect their own officers. The designated Federal officer shall attend all meetings of the council.

(g) At least 3 council members from each of the 3 categories of interest from which appointments are made pursuant to paragraph (c) of this section must be present to constitute an official meeting of the council. Formal recommendations shall require agreement of at least 3 council members from each of the 3 categories of interest from which appointments are made. Requests for Secretarial review provided for in paragraph (h) of this section shall

require agreement of the 15 council members.

(h) Where the multiple resource advisory council becomes concerned that its advice is being arbitrarily disregarded, the council may request that the Secretary respond directly to such concerns within 60 days of receipt. Such a request can be made only upon the agreement of all council members. The Secretary's response shall not constitute a decision on the merits of any issue that is or might become the subject of an administrative appeal, and shall not be appealable.

(i) Administrative support for a multiple resource advisory council shall be provided by the office of the designated Federal officer.

13. A new § 1784.6–2 is added to read as follows:

§ 1784.6–2 Rangeland resource teams.

Multiple resource advisory councils may form rangeland resource teams for the purposes of providing local level input and serving as fact-finding teams in response to a petition from local citizens or on the motion of the council. Rangeland resource teams provide input and recommendations to the multiple resource advisory council on concerns pertaining to grazing administration on public lands within the area for which the rangeland resource team is formed, not to exceed the geographical area or scope of management actions for which the multiple resource advisory council provides advice.

(a) Rangeland resource teams shall consist of 5 members selected by the multiple resource advisory council. Membership shall include 2 persons holding Federal grazing permits or leases within the area for which input is sought and who have resided within the jurisdiction of the rangeland resource team for at least two years prior to their selection, 1 representative of the local public-at-large who has resided within the jurisdiction of the rangeland resource team for at least two years prior to selection who is not a Federal grazing permittee or lessee, 1 representative of a nationally or regionally recognized environmental organization who is not a Federal grazing permittee or lessee, and 1 representative of national, regional or local wildlife or recreation interests who is not a Federal grazing permittee or lessee. At least one rangeland resource team member must also be a member of the multiple resource advisory council. Persons may qualify for selection as rangeland resource team members by virtue of their knowledge or experience of the lands, resources, and communities that fall within the area for which they are formed. Nominations for membership shall be accompanied by letters of recommendation from local interests which the nominee will be representing.

(b) Members of rangeland resource teams shall attend a course of instruction in the management of rangeland ecosystems that has been approved by the responsible Bureau of Land Management State Director.

(c) Established rangeland resource teams shall remain intact until such time as they are terminated by the multiple resource advisory council, or until the charter of the multiple resource advisory council expires.

(d) Rangeland resource teams shall have opportunities to raise any matter of concern with the multiple resource advisory council and to request that the multiple resource advisory council form a technical review team pursuant to § 1784.6–3 to conduct fact-finding and to prepare options for the council's consideration.

14. A new § 1784.6–3 is added to read as follows:

§ 1784.6–3 Technical review teams.

(a) A multiple resource advisory council may establish, on an as needed basis, a technical review team in response to a petition of an involved rangeland resource team or on their own motion. Technical review teams may also be established by a rangeland resource team chartered as an advisory committee. The function of technical review teams shall be limited to tasks assigned by the parent advisory committee relating to fact finding within the geographical area and scope of management actions for which the parent advisory committee provides advice.

(b) Members of technical review teams shall be selected by the multiple resource advisory council on the basis of their knowledge of resource management or their familiarity with the specific issues for which the technical review team has been formed. The technical review team shall include at least 1 member of the parent advisory committee.

(c) Technical review teams shall terminate upon completion of the task assigned by the parent advisory committee.

PART 4100—GRAZING ADMINISTRATION—EXCLUSIVE OF ALASKA

15. The authority citation for part 4100 continues to read as follows:

Authority: 43 U.S.C. 315, 315a–315r, 43 U.S.C. 1701 *et seq.*, 43 U.S.C. 1901 *et seq.*, 43 U.S.C. 1181d.

Subpart 4100—Grazing Administration—Exclusive of Alaska, General

16. Section 4100.0–2 is revised to read as follows:

§ 4100.0–2 Objectives.

The objectives of these regulations are: to promote the orderly use, improvement and development of the public lands; to preserve their resources from destruction and unnecessary injury; to maintain the public values provided by open spaces and integral ecosystems; to enhance the productivity of public lands for multiple use purposes by preventing overgrazing and soil deterioration; to stabilize the western livestock industry and dependent communities; and to provide for the inventory and categorization of public lands on the basis of range conditions and trends. These objectives shall be realized in a manner that is consistent with land use plans, multiple use, sustained yield, environmental values, economic and other objectives stated in 43 CFR part 1720, subpart 1725; the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315, 315a-315r); section 102 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) and the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 *et seq.*).

17. Section 4100.0–5 is amended by removing the definition of "Affected interests" "Grazing preference", and "Subleasing"; revising the definitions of "Active use", "Actual use", "Allotment management plan (AMP)", "Consultation, cooperation and coordination", "Grazing lease", "Grazing permit", "Land use plan", "Range improvement", Suspension", and "Utilization"; and by adding in alphabetical order the definitions of "Activity plan", "Affiliate", "Conservation use", "Grazing preference or preference", "Interested public", "Permitted use", "Temporary nonuse", and "Unauthorized leasing and subleasing" to read as follows:

§ 4100.0–5 Definitions

* * * * *

Active use means the current authorized use, including livestock grazing and conservation use. Active use may constitute a portion, or all, of permitted use. Active use does not include temporary nonuse or suspended use of forage within all or a portion of an allotment.

Actual use means where, how many, what kind or class of livestock, and how

long livestock graze on an allotment, or on a portion or pasture of an allotment.

* * * * *

Activity plan means a plan for managing a resource use or value to achieve specific objectives. For example, an allotment management plan is an activity plan for managing livestock grazing use to improve or maintain rangeland conditions.

Affiliate means an entity or person that controls or has the power to control a permittee or lessee. The term "control" means any one or a combination of the following relationships:

(1) With regard to an entity, based on instruments of ownership or voting securities, owning of record in excess of 50 percent of the entity, or having any other relationship which gives a person authority directly or indirectly to determine the manner in which the entity conducts grazing operations;

(2) Having any other relationship which gives a person authority directly or indirectly to determine the manner in which an applicant, permittee or lessee conducts grazing operations; or

(3) Presumptively in the following relationships, unless a person can demonstrate that he does not in fact have the authority directly or indirectly to determine the manner in which the relevant grazing operation is conducted: being an officer, director, or general partner of the entity; having the ability to commit the financial or real property assets or working resources of the entity; or based on instruments of ownership or voting securities, owning of record 10 through 50 percent of an entity.

* * * * *

Allotment management plan (AMP) means a documented program developed as an activity plan that focuses on, and contains the necessary instructions for, the management of livestock grazing on specified public lands to meet resource condition, sustained yield, multiple use, economic and other objectives.

* * * * *

Conservation use means an activity, excluding livestock grazing, for purposes of:

(1) Protecting the land and its resources from destruction or unnecessary injury;

(2) Improving rangeland conditions; or

(3) Enhancing resource values, uses, or functions.

Consultation, cooperation, and coordination means an interactive process for obtaining advice, or exchanging opinions on the development, revision or termination of allotment management plans or other activity plans affecting the administration of grazing on public lands, from other agencies and affected permittee(s) or lessee(s), landowners involved, advisory committees where established, any State having lands or responsible for managing resources within the area and other interested public.

* * * * *

Grazing lease means a document authorizing use of the public lands outside an established grazing district. Grazing leases specify all authorized use including livestock grazing, suspended use, and conservation use. Leases specify the total number of AUMs apportioned.

Grazing permit means a document authorizing use of the public lands within an established grazing district. Grazing permits specify all authorized use including livestock grazing, suspended use, and conservation use. Permits specify the total number of AUMs apportioned.

Grazing preference or *preference* means a superior or priority position against others for the purpose of receiving a grazing permit or lease. This priority is attached to base property owned or controlled by the permittee or lessee.

Interested public means an individual, group or organization that has submitted a written request to the authorized officer to be provided an opportunity to be involved in the decisionmaking process for the management of livestock grazing on specific grazing allotments or has submitted written comments to the authorized officer regarding the management of livestock grazing on a specific allotment.

Land use plan means a resource management plan or management framework plan. These plans are developed through public participation in accordance with the provisions of the Federal Land Policy and Management Act of 1976 and establish management direction for resource uses of public lands.

* * * * *

Permitted use means the forage allocated by, or under the guidance of, an applicable land use plan for livestock grazing in an allotment under a permit or lease and is expressed in AUMs.

Range improvement means an authorized physical modification or treatment which is designed to improve production of forage; change vegetation composition; control patterns of use; provide water; stabilize soil and water conditions; restore, protect and improve the condition of rangeland ecosystems; or provide habitat for livestock, wild horses and burros, and fish and wildlife. The term includes, but is not limited to, structures, treatment projects, and use of mechanical devices or modifications achieved through mechanical means.

* * * * *

Suspension means the temporary withholding from active use, through a decision issued by the authorized officer or by agreement, of part or all of the permitted use in a grazing permit or lease.

Temporary nonuse means the authorized withholding, on an annual basis, of all or a portion of permitted livestock use in response to a request of the permittee or lessee.

* * * * *

Unauthorized leasing and subleasing means:

(1) The assignment of base property and the associated Federal grazing permit or lease to another party without a required transfer approved by the authorized officer,

(2) The assignment of public land grazing privileges to another party without the assignment of the associated base property,

(3) Allowing another party to graze on public lands livestock that are not owned or controlled by the permittee or lessee, or

(4) Allowing another party to graze livestock on public lands under a pasturing agreement without the approval of the authorized officer.

Utilization means the percentage of forage that has been consumed by livestock, wild horses and burros, wildlife and insects during a specified period. The term is also used to refer to the pattern of such use.

18. Section 4100.0–7 is revised to read as follows:

§ 4100.0–7 Cross reference.

The regulations at part 1600 of this chapter govern the development of land use plans; the regulations at part 1780, subpart 1784 of this chapter govern advisory committees; and the regulations at subparts B and E of part 4 of this title govern appeals and hearings.

19. A new § 4100.0–9 is added as follows:

§ 4100.0–9 Information collection.

(a) The information collection requirements contained in Group 4100 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1004–0005, 1004–0019, 1004–0020, 1004–0041, 1004–0047, 1004–0051, and 1004–0068. The

information would be collected to permit the authorized officer to determine whether an application to utilize public lands for grazing or other purposes should be approved. Response is required to obtain a benefit.

(b) Public reporting burden for the information collections are as follows: clearance number 1004–0005 is estimated to average 0.33 hours per response, clearance number 1004–0019 is estimated to average 0.33 hours per response, clearance number 1004–0020 is estimated to average 0.33 hours per response, clearance number 1004–0041 is estimated to average 0.25 hours per response, clearance number 1004–0047 is estimated to average 0.25 hours per response, clearance number 1004–0051 is estimated to average 0.3 hours per response, and clearance number 1004–0068 is estimated to average 0.17 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing the burden to the Information Collection Clearance Officer (873), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004–0005, 1004–0019, 1004–0020, 1004–0041, 1004–0047, 1004–0051, or 1004–0068, Washington, DC 20503.

Subpart 4110—Qualifications and Preference

20. In § 4110.1, the introductory text of the section, and paragraphs (a), (b), and (c) are redesignated as paragraphs (a) introductory text, (a)(1), (a)(2), and (a)(3), respectively, newly redesignated paragraph (a) introductory text is revised, and a new paragraph (b) is added to read as follows:

§ 4110.1 Mandatory qualifications.

(a) Except as provided under §§ 4110.1–1, 4130.3, and 4130.4–3, to qualify for grazing use on the public lands an applicant must own or control land or water base property, and must be:

* * * * *

(b) Applicants for the renewal or issuance of new permits and leases and any affiliates must be determined by the authorized officer to have a satisfactory record of performance.

(1) The applicant for renewal of a grazing permit or lease, and any affiliate, shall be deemed to have a satisfactory record of performance if the authorized officer determines the applicant and affiliates to be in substantial compliance with the terms and conditions of the existing Federal grazing permit or lease for which renewal is sought, and with the rules and regulations applicable to the permit or lease. The authorized officer may take into consideration circumstances beyond the control of the applicant or affiliate in determining whether the applicant and affiliates are in substantial compliance with permit or lease terms and conditions and applicable rules and regulations.

(2) Applicants for new permits or leases, and any affiliates, shall be deemed not to have a record of satisfactory performance when:

(i) The applicant or affiliate has had any Federal grazing permit or lease canceled for violation of the permit or lease within the 36 calendar months immediately preceding the date of application,

(ii) The applicant or affiliate has had any State grazing permit or lease, for lands within the grazing allotment for which a Federal permit or lease is sought, canceled for violation of the permit or lease within the 36 calendar months immediately preceding the date of application, or

(iii) The applicant or affiliate has been barred from holding a Federal grazing permit or lease by order of a court of competent jurisdiction.

(3) In determining whether affiliation exists, the authorized officer shall consider all appropriate factors, including, but not limited to, common ownership, common management, identity of interests among family members, and contractual relationships.

(4) Applicants shall submit an application and any other information requested by the authorized officer in order to determine that all qualifications have been met.

21. Section 4110.1–1 is revised to read as follows:

§ 4110.1–1 Acquired lands.

Where lands have been acquired by the Bureau of Land Management through purchase, exchange, act of Congress or executive order, and an agreement or the terms of the act or executive order provide that the Bureau of Land Management shall honor existing grazing permits or leases, such permits or leases are governed by the terms and conditions in effect at the time of acquisition by the Bureau of Land Management, and are not subject to the requirements of § 4110.1.

22. Section 4110.2–1 is amended by revising paragraphs (a)(1), (a)(2) and (c) to read as follows:

§ 4110.2–1 Base property.

(a) * * *

(1) It is capable of serving as a base of operation for livestock use of public lands within a grazing district; or

(2) It is contiguous land, or, when no applicant owns or controls contiguous land, noncontiguous land that is capable of being used in conjunction with a livestock operation which utilizes public lands outside a grazing district.

* * * * *

(c) An applicant shall provide a legal description, or plat, of the base property and shall certify to the authorized officer that this base property meets the requirements under paragraphs (a) and (b) of this section. A permittee's or lessee's interest in water previously recognized as base property on public land shall be deemed sufficient in meeting the requirement that the applicant control base property. Where such waters become unusable and are replaced by newly constructed or reconstructed water developments that are the subject of a range improvement permit or cooperative range improvement agreement, the permittee's or lessee's interest in the replacement water shall be deemed sufficient in meeting the requirement that the applicant control base property.

23. Section 4110.2–2 is amended by revising the section heading and paragraph (a), and in paragraph (c) removing the term "grazing preference" and adding in its place the term "permitted use" to read as follows:

§ 4110.2–2 Specifying permitted use.

(a) Permitted use is granted to holders of grazing preference and shall be specified in all grazing permits and leases. Permitted use shall encompass all authorized use including livestock use, any suspended use, and conservation use, except for permits and leases for designated ephemeral rangelands, or annual rangelands where livestock use is occasionally authorized based upon forage availability. Authorized livestock use shall be based upon the amount of forage available for livestock grazing as established in the land use plan, except, in the case of ephemeral or annual rangelands, a land use plan or activity plan may alternatively prescribe vegetation standards to be met in the occasional use of such rangelands.

* * * * *

24. Section 4110.2–3 is amended by revising paragraph (a)(1), redesignating paragraph (f) as (g), removing from

paragraph (b) the term "grazing preference" and adding in its place the term "permitted use", and adding a new paragraph (f) to read as follows:

§ 4110.2–3 Transfer of grazing preference.

(a) * * *

(1) The transferee shall meet all qualifications and requirements of §§ 4110.1 and 4110.2.

* * * * *

(f) Transfers shall be for a period of not less than 3 years unless a shorter term is determined by the authorized officer to be consistent with management and resource condition objectives.

* * * * *

25. Section 4110.2–4 is revised to read as follows:

§ 4110.2–4 Allotments.

After consultation with the affected grazing permittees or lessees, the State having lands or responsible for managing resources within the area, and the interested public, the authorized officer may designate and adjust grazing allotment boundaries. The authorized officer may combine or divide allotments, through an agreement or by decision, when necessary for the proper and efficient management of public rangelands.

26. Section 4110.3 is revised to read as follows:

§ 4110.3 Changes in permitted use.

The authorized officer shall periodically review the permitted use specified in a grazing permit or lease and shall make changes in the permitted use as needed to manage, maintain or improve rangeland productivity, to restore ecosystems to properly functioning condition, or to comply with the national requirements and standards and guidelines pursuant to subpart 4180. These changes must be supported by monitoring, field observations, ecological site inventory or other data acceptable to the authorized officer.

27. Section 4110.3–1 is amended by revising the section heading and paragraph (a), removing the words "grazing preferences" from paragraph (b) and adding in their place the words "suspended permitted use", revising the introductory text of paragraph (c), revising paragraph (c)(1), and in paragraph (c)(2) removing the term "grazing preference" and adding in its place the term "permitted use" and removing the words "and/or" and adding in their place the word "and" to read as follows:

§ 4110.3–1 Increasing permitted use.

* * * * *

(a) Additional forage temporarily available for livestock grazing use may be apportioned on a nonrenewable basis.

* * * * *

(c) After consultation with the affected permittees or lessees, the State having lands or managing resources within the area, and the interested public, additional forage on a sustained yield basis available for livestock grazing use in an allotment may be apportioned to permittees or lessees or other applicants, provided the permittee, lessee, or other applicant is found to be qualified under subpart 4110. Additional forage shall be apportioned in the following priority:

(1) Permittees or lessees in proportion to their contribution or stewardship efforts which result in increased forage production;

* * * * *

28. Section 4110.3–2 is amended by revising the section heading, removing from paragraph (a) the term "Active" and adding in its place the term "Permitted", removing paragraph (c) and revising paragraph (b) to read as follows:

§ 4110.3–2 Decreasing permitted use.

* * * * *

(b) When monitoring or field observations show grazing use or patterns of use are not consistent with the national requirements or standards and guidelines, or grazing use is otherwise causing an unacceptable level or pattern of utilization, or when use exceeds the livestock carrying capacity as determined through monitoring, ecological site inventory or other acceptable methods, the authorized officer shall reduce authorized grazing use or otherwise modify management practices.

29. Section 4110.3–3 is revised to read as follows:

§ 4110.3–3 Implementing reductions in permitted use.

(a) After consultation with the affected permittee or lessee, the State having lands or managing resources within the area, and the interested public, reductions of permitted use shall be implemented through a documented agreement or by decision of the authorized officer. Decisions implementing § 4110.3–2 shall be issued as proposed decisions pursuant to § 4160.1 except as provided in paragraph (b) of this section.

(b) When the authorized officer determines that the soil, vegetation, or other resources on the public lands require protection because of conditions such as drought, fire, flood, or insect infestation, or when continued grazing use poses a significant risk of resource damage from these factors, after consultation with, or a reasonable attempt to consult with, affected permittees or lessees, the interested public, and the State having lands or responsible for managing resources within the area, the authorized officer shall close allotments or portions of allotments to grazing by any kind of livestock or modify authorized grazing use notwithstanding the provisions of paragraph (a) of this section. Notices of closure and decisions requiring modification of authorized grazing use may be issued as final decisions effective upon issuance or on the date specified in the decision. Such decisions shall remain in effect pending the decision on appeal unless a stay is granted by the Office of Hearings and Appeals in accordance with 43 CFR 4.21.

30. Section 4110.4–2 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 4110.4–2 Decrease in land acreage.

(a) * * *

(1) Grazing permits or leases may be canceled or modified as appropriate to reflect the changed area of use.

(2) Permitted use may be canceled in whole or in part. Cancellations determined by the authorized officer to be necessary to protect the public lands will be apportioned by the authorized officer based upon the level of available forage and the magnitude of the change in public land acreage available, or as agreed to among the authorized users and the authorized officer.

* * * * *

Subpart 4120—Grazing Management

31. Section 4120.2 is revised to read as follows:

§ 4120.2 Allotment management plans and resource activity plans.

Allotment management plans or other activity plans may be developed by permittees or lessees, other Federal or State resource management agencies, interested citizens, and the Bureau of Land Management. When allotment management plans, or other activity plans affecting the administration of grazing allotments, are developed, the following provisions apply:

(a) An allotment management plan or other activity plan intended to serve as the functional equivalent of allotment management plans shall be prepared in careful and considered consultation, cooperation and coordination with

affected permittees or lessees, landowners involved, the multiple resource advisory council, any State having lands or responsible for managing resources within the area to be covered by such a plan, and the interested public. The allotment management plan, or functional equivalent, shall include terms and conditions under §§ 4130.6, 4130.6–1, 4130.6–2 and 4130.6–3, as well as standards and guidelines. The plan shall prescribe the livestock grazing practices necessary to meet specific resource condition objectives. The plan shall specify the limits of flexibility, to be determined and granted on the basis of the operator's demonstrated stewardship, within which the permittee(s) or lessee(s) may adjust operations without prior approval of the authorized officer. The plan shall provide for monitoring to evaluate the effectiveness of management actions in achieving the specific resource condition objectives of the plan. The plan shall become effective upon approval by the authorized officer.

(b) Private and State lands may be included in allotment management plans or other activity plans dealing with rangeland management with the consent or at the request of the parties who own or control those lands.

(c) The authorized officer shall provide opportunity for public participation in the planning and environmental analysis of proposed allotment management plans or other activity plans affecting the administration of grazing and shall give public notice concerning the availability of environmental documents prepared as a part of the development of an allotment management plan or other activity plan, prior to implementing the plan. The decision document following the environmental analysis shall be considered the proposed decision for the purposes of subpart 4160 of this part.

(d) A requirement to conform with completed allotment management plans or other applicable activity plans shall be incorporated into the terms and conditions of the grazing permit or lease for the allotment.

(e) Allotment management plans may be revised or terminated by the authorized officer after consultation with the permittee or lessee, the interested public, and other involved parties.

32. A new paragraph (f) is added to § 4120.3–1 to read as follows:

§ 4120.3–1 Conditions for range improvements.

* * * * *

(f) Proposed range improvement projects shall be reviewed in accordance with the requirements of the National Environmental Policy Act of 1969, and regulations promulgated thereunder. The decision document following the environmental analysis shall be considered the proposed decision under subpart 4160 of this part.

33. Section 4120.3–2 is revised as follows:

§ 4120.3–2 Cooperative range improvement.

(a) The BLM may enter into a cooperative range improvement agreement with any person, organization, or other government entity for the installation, use, maintenance, and/or modification of range improvements or rangeland developments to achieve management or resource condition objectives. The cooperative range improvement agreement shall specify how the costs or labor, or both, shall be divided between the United States and cooperator(s).

(b) Subject to valid rights existing on (The Effective Date of the Final Rule will be Inserted here), the United States shall have title to all permanent structural range improvements made on public lands.

(c) The permittee or lessee may retain title to temporary structural range improvements such as loading chutes, corrals and water troughs for hauled water if no part of the cost for improvement was borne by the United States.

(d) The United States shall have title to nonstructural range improvements such as seeding, spraying, and chaining.

(e) Range improvement work performed by a cooperator or permittee on the public lands or lands administered by the Bureau of Land Management does not confer the exclusive right to use the improvement or the land affected by the range improvement work.

34. Section 4120.3–3 is amended by revising the first sentence of paragraph (a), and paragraphs (b) and (c) to read as follows:

§ 4120.3–3 Range improvement permits.

(a) Any permittee or lessee may apply for a range improvement permit to install, use, maintain, and/or modify range improvements that are needed to achieve management objectives established for the allotment in which the permit or lease is held. * * *

(b) The permittee or lessee may hold the title to authorized removable range improvements used as livestock handling facilities such as corrals, creep feeders and loading chutes, and to temporary improvements such as troughs for hauled water. Title to permanent range improvements authorized after (The Effective Date of the Final Rule will be Inserted here), will be in the United States. After (The Effective Date of the Rule will be Inserted here), the authorization for new permanent water developments such as spring developments, wells, reservoirs, stock tanks, and pipelines shall be through cooperative range improvement agreements. A permittee's or lessee's interest for contributed funds, labor, and materials shall be documented by the authorized officer to ensure proper credit for the purposes of §§ 4120.3–5 and 4120.3–6(c).

(c) Where a permittee or lessee cannot make use of the forage available for livestock and an application for temporary nonuse or conservation use has been denied or the opportunity to make use of the available forage is requested by the authorized officer, the permittee or lessee shall cooperate with the temporary authorized use of forage by another operator, when it is authorized by the authorized officer following consultation with the preference permittee(s) or lessee(s).

(1) A permittee or lessee shall be reasonably compensated for the use and maintenance of improvements and facilities by the operator who has an authorization for temporary grazing use.

(2) The authorized officer may mediate disputes about reasonable compensation and, following consultation with the interested parties, make a determination concerning the fair and reasonable share of operation and maintenance expenses and compensation for use of authorized improvements and facilities.

(3) Where a settlement cannot be reached, the authorized officer shall issue a temporary grazing authorization including appropriate terms and conditions and the requirement to compensate the preference permittee or lessee for the fair share of operation and maintenance as determined by the authorized officer under subpart 4160 of this part.

35. A new § 4120.3–8 is added to read as follows:

§ 4120.3–8 Range improvement fund.

(a) In addition to range developments accomplished through other resources management funds, authorized range improvement may be secured through the use of the appropriated range improvement fund. One-half of the available funds shall be expended in the State and district from which they were derived. The remaining one-half of the fund shall be allocated, on a priority

basis, by the Secretary or designee for on-the-ground rehabilitation, protection and improvements of public rangeland ecosystems.

(b) Funds appropriated for range improvement are to be used for investment in all forms of improvements that benefit rangeland resources including riparian area rehabilitation, improvement and protection, fish and wildlife habitat improvement or protection, soil and water resource improvement, wild horse and burro habitat management facilities, vegetation improvement and management, and livestock grazing management. The funds may be used for activities associated with on-the-ground improvements including the planning, design, layout, contracting, modification, maintenance for which BLM is responsible, and monitoring and evaluating the effectiveness of specific range improvement projects.

(c) During the planning of the range development or range improvement programs, the authorized officer shall consult the multiple resource advisory council, affected permittees, lessees, and members of the interested public.

36. A new § 4120.3–9 is added to read as follows:

§ 4120.3–9 Water rights for the purpose of livestock grazing on public lands.

Any right acquired on or after (The Effective Date of the Rule Would be Inserted here) to use water on public land for the purpose of livestock watering on public land shall be acquired, perfected, maintained and administered under the substantive and procedural laws of the State within which such land is located. To the extent allowed by the law of the State within which the land is located, any such water right shall be acquired, perfected, maintained, and administered in the name of the United States.

37. A new § 4120.5 is added to read as follows:

§ 4120.5 Cooperation in management.

The authorized officer shall, to the extent appropriate, cooperate with Federal, State, Indian tribal and local governmental entities, institutions, organizations, corporations, associations, and individuals to achieve the objectives of this part.

38. A new § 4120.5–1 is added to read as follows:

§ 4120.5–1 Cooperation with State, county, and Federal agencies.

Insofar as the programs and responsibilities of other agencies and units of government involve grazing upon the public lands and other lands administered by the Bureau of Land Management, or the livestock which graze thereon, the Bureau of Land Management will cooperate, to the extent consistent with applicable laws of the United States, with the involved agencies and government entities. The authorized officer shall cooperate with State, county, and Federal agencies in the administration of laws and regulations relating to livestock, livestock diseases, sanitation, and noxious weeds including:

(a) State cattle and sheep sanitary or brand boards in control of stray and unbranded livestock, to the extent such cooperation does not conflict with the Wild Free-Roaming Horse and Burro Act of December 15, 1971; and

(b) County or other local weed control districts in analyzing noxious weed problems and developing control programs for areas of the public lands and other lands administered by the Bureau of Land Management.

Subpart 4130—Authorizing Grazing Use

39. Section 4130.1 is revised to read as follows:

§ 4130.1 Applications.

Applications for grazing permits or leases (active grazing use and conservation use), annual grazing authorizations (active grazing use and temporary nonuse), free-use grazing permits and other grazing authorizations shall be filed with the authorized officer at the local Bureau of Land Management office having jurisdiction over the public lands or other lands administered by the Bureau of Land Management.

40. Section 4130.1–1 is amended by adding 2 new sentences at the end of the paragraph (b) to read as follows:

§ 4130.1–1 Changes in grazing use.

* * * * *

(b) * * * Permittees and lessees may apply to activate forage in temporary nonuse or to place forage in temporary nonuse, and may apply for the use of forage that is temporarily available on ephemeral or annual ranges. Temporary increases or decreases in grazing use, not to exceed the greater of 25 percent of the active grazing use or 100 AUMs, may be authorized or required by the authorized officer following consultation with the affected permittees or lessees and the State having land or responsibility for managing resources within the allotment, provided such changes comply with applicable land use plans and standards and guidelines, and are within the scope of the terms and conditions of the existing permits or leases.

41. Section 4130.1–2 is amended by revising paragraph (b), removing the word "and" from paragraph (e) and adding new paragraphs (g) and (h) to read as follows:

§ 4130.1–2 Conflicting applications.

* * * * *

(b) Proper use of rangeland resources;

* * * * *

(g) Demonstrated stewardship by the applicant to improve or maintain and protect the rangeland ecosystem; and

(h) The applicant's and affiliate's history of compliance with the terms and conditions of grazing permits and leases of the Bureau of Land Management and any other Federal or State agency, including any record of suspensions or cancellation of grazing use for violations of terms and conditions of agency grazing rules.

42. Section 4130.2 is amended by redesignating paragraphs (b), (c), (d) and (e) as paragraphs (c), (d), (e) and (i), respectively, revising paragraphs (a) and newly redesignated paragraph (d), and adding new paragraphs (b), (f), (g), and (h) to read as follows:

§ 4130.2 Grazing permits or leases.

(a) Grazing permits or leases shall be issued to qualified applicants to authorize use on the public lands and other lands under the administration of the Bureau of Land Management that are designated as available for livestock grazing through land use plans. Authorized use may include livestock grazing, temporary nonuse and conservation use. These grazing permits and leases shall specify terms and conditions pursuant to §§ 4130.6, 4130.6–1, and 4130.6–2.

(b) The authorized officer shall consult with affected permittees or lessees, the State having lands or responsible for managing resources within the area, and the interested public prior to the issuance or renewal of grazing permits and leases.

* * * * *

(d) The term of grazing permits or leases authorizing livestock grazing on the public lands and other lands under the administration of the Bureau of Land Management shall be 10 years unless:

(1) The land is being considered for disposal;

(2) The land will be devoted to a public purpose which precludes grazing prior to the end of 10 years;

(3) The term of the base property lease is less than 10 years, in which case the term of the Federal permit or lease shall

coincide with the term of the base property lease; or

(4) The authorized officer determines that a permit or lease for less than 10 years is necessary or desirable to protect and conserve the public lands and the resources thereon.

* * * * *

(f) The authorized officer will not offer, grant or renew grazing permits or leases when the applicants, including permittees or lessees seeking renewal, refuse to accept the proposed terms and conditions of a permit or lease.

(g) Temporary nonuse and conservation use may be approved by the authorized officer if such use is determined to be in conformance with the applicable land use plan, AMP or other activity plan, and standards and guidelines as follows:

(1) Conservation use may be approved for periods of up to 10 years when, in the determination of the authorized officer, the proposed nonuse will promote rangeland resource protection or enhancement of resource values or uses, including more rapid progress toward resource condition objectives; or

(2) Temporary nonuse for reasons including but not limited to financial conditions or annual fluctuations of livestock, may be approved on an annual basis for no more than 3 consecutive years. Permittees or lessees applying for temporary nonuse shall state the reasons supporting nonuse.

(h) Application for nonrenewable grazing permits and leases under §§ 4110.3–1 and 4130.4–2 for areas for which conservation use has been authorized will not be approved. Forage made available as a result of temporary nonuse may be made available to qualified applicants under § 4130.4–2.

* * * * *

43. Paragraph (a) of § 4130.4–1 is revised to read as follows:

§ 4130.4–1 Exchange-of-use grazing agreements.

(a) An exchange-of-use grazing agreement may be issued to an applicant who owns or controls lands which are unfenced and intermingled with public lands when use under such an agreement will be in harmony with the management objectives for the allotment and will be compatible with the existing livestock operations. The agreements shall contain appropriate terms and conditions required under § 4130.6 of this title that ensure the orderly administration of the range, including fair and equitable sharing of the operation and maintenance of range improvements. The term of an exchange-of-use agreement may not exceed the length of the term for any leased lands that are offered in exchange-of-use.

* * * * *

44. Section 4130.4–3 is revised to read as follows:

§ 4130.4–3 Crossing permits.

A crossing permit may be issued by the authorized officer to any applicant showing a need to cross the public land or other land under Bureau of Land Management control, or both, with livestock for proper and lawful purposes. A temporary use authorization for trailing livestock shall contain terms and conditions for the temporary grazing use that will occur as deemed necessary by the authorized officer to achieve the objectives of this part.

45. Section 4130.5 is amended by revising paragraph (d) and adding a new paragraph (f) to read as follows:

§ 4130.5 Ownership and identification of livestock.

* * * * *

(d) Except as provided in paragraph (f) of this section, where a permittee or lessee controls but does not own the livestock which graze the public lands, the agreement that gives the permittee or lessee control of the livestock by the permittee or lessee shall be filed with the authorized officer and approval received prior to any grazing use. The document shall describe the livestock and livestock numbers, identify the owner of the livestock, contain the terms for the care and management of the livestock, specify the duration of the agreement, and shall be signed by the parties to the agreement.

* * * * *

(f) Livestock owned by sons and daughters of grazing permittees and lessees may graze public lands included within the permit or lease of their parents when the following conditions exist:

(1) The sons and daughters are participating in educational or youth programs related to animal husbandry, agribusiness or rangeland management, or

(2) The sons and daughters are actively involved in the family ranching operation and are establishing a livestock herd with the intent of assuming part or all of the family ranch operation, and

(3) The livestock owned by the sons and daughters to be grazed on public lands do not comprise greater than 50 percent of the total number authorized to occupy public lands under their parent's permit or lease,

(4) The brands or other markings of livestock that are owned by sons and daughters are recorded on the parent's permit, lease, or grazing application,

(5) Use by livestock owned by sons and daughters, when considered in addition to use by livestock owned or controlled by the permittee or lessee, does not exceed authorized numbers and is consistent with other terms and conditions of the permit or lease.

46. Section 4130.6 is revised to read as follows:

§ 4130.6 Terms and conditions.

Livestock grazing permits and leases shall contain terms and conditions determined by the authorized officer to be appropriate to achieve management and resource condition objectives for the public lands and other lands administered by the Bureau of Land Management, and to ensure conformance with the national requirements and established standards and guidelines.

47. Section 4130.6–1 is amended by revising the second sentence of paragraph (a) and adding a new paragraph (c) to read as follows:

§ 4130.6–1 Mandatory terms and conditions.

(a) * * * The authorized livestock grazing use shall not exceed the livestock carrying capacity of the allotment.

* * * * *

(c) Permits and leases shall incorporate terms and conditions that ensure conformance with the national requirements and standards and guidelines pursuant to subpart 4180.

48. Section 4130.6–2 is amended by revising paragraph (f), removing the period from the end of paragraph (g) and adding a "; and" and by adding a new paragraph (h) to read as follows:

§ 4130.6–2 Other terms and conditions.

* * * * *

(f) Provision for livestock grazing to be temporarily delayed, discontinued or modified to allow for the reproduction, establishment, or restoration of vigor of plants, provide for the improvement of riparian areas to achieve proper functioning condition or for the protection of other rangeland resources and values consistent with objectives of applicable land use plans, or to prevent compaction of wet soils, such as where delay of spring turnout is required because of weather conditions or lack of plant growth;

* * * * *

(h) A statement disclosing the requirement that permittees or lessees shall provide reasonable access across private and leased lands to the Bureau of Land Management for the orderly

administration, management and protection of the public lands.

49. Section 4130.6–3 is revised to read as follows:

§ 4130.6–3 Modification.

Following consultation with the affected lessees or permittees, other landowners involved, the interested public, and States having lands or responsibility for managing resources within the affected area, the authorized officer may modify terms and conditions of the permit or lease when the present grazing use is not meeting the land use plan, AMP or other activity plan, or management objectives, or is not in conformance with the national requirements or the standards and guidelines. To the extent practical, the authorized officer shall provide to affected permittees or lessees, States having lands or responsibility for managing resources within the affected area, and the interested public an opportunity to review, comment and give input during the preparation of reports that evaluate monitoring and other data that are used as a basis for making decisions to increase or decrease grazing use, or to change the terms and conditions of a permit or lease.

50. Section 4130.7–1 is amended by revising paragraphs (a) and (c), redesignating paragraphs (d) and (e) as (f) and (g), respectively, adding new paragraphs (d), (e), and (h), and in newly redesignated paragraph (f) adding a new sentence after the second sentence and a sentence to the end of the paragraph to read as follows:

§ 4130.7–1 Payment of fees.

(a) Grazing fees shall be established annually by the Secretary.

(1) Except as provided in paragraphs (a)(2), (a)(3) and (a)(4) of this section, and § 4130.7–2, the grazing fee per AUM shall be equal to the $3.96 base value multiplied by the Forage Value Index computed annually from private grazing land lease rate data supplied by the National Agricultural Statistics Service, as follows:

Grazing Fee per AUM=$3.96×Forage Value Index

$3.96=The base value per AUM; and

Forage Value Index (FVI) = the weighted average of the prior year's private grazing land lease rate per AUM for pasturing cattle on private rangelands in each of the 17 contiguous western States (Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming) divided by the weighted average of the private grazing land lease rate per AUM for pasturing cattle in the year 1996 in each of the 17 contiguous western States. The weighted averages are calculated by multiplying the private grazing land lease rate for each of the 17 States by the number of public AUMs sold on public lands, National Forests and National Grasslands in each of the States during the respective years and dividing by the total number of public AUMs sold in the 17 western States in the respective years.

(2) Except as provided in paragraph (a)(3) of this section, and § 4130.7–2, the fee shall be phased in over the years 1995 through 1997 as follows:

Grazing Fee per AUM for 1995=$2.75

Grazing Fee per AUM for 1996=$3.50

Grazing Fee per AUM for 1997=$3.96 × FVI

Beginning in the year 1998 and thereafter the fee shall be computed using the grazing fee formula specified in paragraph (a)(1) of this section.

(3) In the absence of the issuance of criteria pertaining to qualification for the incentive-based fee reduction provided in § 4130.7–2(b), and beginning with the start of grazing year 1997, a base value of $3.50 shall be substituted in the formula provided in paragraph (a)(1) of this section and the grazing fee shall be calculated as follows:

Grazing Fee per AUM for 1997=$3.50×FVI

Beginning in the year 1998, and until the first grazing year after the issuance of final regulations prescribing criteria for qualifying for an incentive based fee become effective, the grazing fee shall be computed using the formula specified in this paragraph.

(4) Any annual increase or decrease in the grazing fee occurring after the 3-year phase-in shall be limited to not more than 25 percent of the fee in the previous year.

* * * * *

(c) Except as provided in paragraph (h) of this section, the full fee shall be charged for each animal unit month of authorized grazing use. For the purposes of calculating the fee, an animal unit month is defined as a month's use and occupancy of range by one cow, bull, steer, heifer, horse, burro, mule, 5 sheep, or 5 goats, over the age of 6 months at the time of entering the public lands or other lands administered by BLM; for all such weaned animals regardless of age; and for such animals that will become 12 months of age during the authorized period of use. No charge shall be made for animals under 6 months of age, at the time of entering public lands or other lands administered by the Bureau of Land Management, that are the natural progeny of animals upon which fees are paid, provided they will not become 12 months of age during the authorized period of use, nor for progeny born during that period. In calculating the billing the grazing fee is prorated on a daily basis and charges are rounded to reflect the nearest whole number of AUMs.

(d) A surcharge shall be added to the grazing fee billings for authorized leasing of base property to which public land grazing preference is attached, or for authorized grazing of livestock owned by persons other than the permittee or lessee except where such use is made by livestock owned by sons and daughters of permittees and lessees as provided in § 4130.5(f). The surcharge shall be over and above any other fees that may be charged for using public land forage. Surcharges shall be paid prior to grazing use being made as follows:

(1) 20 percent of the grazing bill for the permitted grazing use that is attached to a leased base property by an approved transfer, or that was leased and attached to another party's base property through an approved transfer;

(2) 50 percent of the grazing bill for pasturing livestock owned by persons other than the permittee or lessee under a grazing authorization; and

(3) 70 percent of the grazing bill when base property is leased and a transfer has been approved and livestock owned by persons other than the permittee or lessee are pastured under a grazing authorization.

(e) The authorized officer may bill in advance for multiple-year grazing use based on the grazing fee in the initial year of such authorization, the results of annual fluctuations in the fee to be reconciled through a supplemental billing at the end of the billing period, when:

(1) The permittee or lessee has agreed to multiple-year billing;

(2) Annual authorized livestock use does not exceed 200 AUMs; and

(3) The multiple-year billing period does not exceed 5 years.

(f) * * * Grazing use that occurs prior to payment of a bill, except where specified in an allotment management plan, is unauthorized and may be dealt with under subparts 4150 and 4170 of this part when permittees or lessees fail to comply with provisions of this section (see § 4130.7–1 (f)). * * * Repeated delays in payment of actual use billings shall be cause to revoke provisions for after-the-grazing-season billing.

* * * * *

(h) The authorized officer may authorize free use under the following circumstances:

(1) The primary objective of authorized grazing use or conservation use is the management of vegetation to meet resource objectives other than the production of livestock forage and such use is in conformance with the requirements of this part;

(2) The primary purpose of grazing use is for scientific research or administrative studies; or

(3) The primary purpose of grazing use is the control of noxious weeds.

§§ 4130.7–2 and 4130.7–3 [Redesignated as §§ 4130.7–3 and 4130.7–4]

51. Sections 4130.7–2 and 4130.7–3 are redesignated as §§ 4130.7–3 and 4130.7–4, respectively.

52. A new § 4130.7–2 is added to read as follows:

§ 4130.7–2 Incentive-based grazing fee reduction.

(a) Where the authorized officer determines that the criteria provided in paragraph (b) of this section have been satisfied, the grazing fee shall be calculated, using the definition of forage value index provided in § 4130.7–1(a)(1), as follows:

Incentive-based grazing Fee per AUM for 1996=$3.96×0.70

Incentive-based grazing Fee per AUM for 1997 and thereafter=$3.96×Forage Value Index × 0.70

(b) *Qualification criteria.* [Reserved]

(c) In the absence of the issuance of criteria pertaining to qualification for the incentive-based fee reduction in paragraph (b) of this section, see § 4130.7–1(a)(3).

(d) Any annual increase or decrease in the incentive-based grazing fee shall be limited to not more than 25 percent of the incentive-based fee in the previous year.

53. The first sentence of newly redesignated § 4130.7–4 is revised to read as follows:

§ 4130.7–4 Service charge.

A service charge shall be assessed for each crossing permit, transfer of grazing preference, application solely for nonuse or conservation use, and each replacement or supplemental billing notice except for actions initiated by the authorized officer. * * *

Subpart 4140—Prohibited Acts

54. Section 4140.1 is amended by revising paragraphs (a)(2), (b)(1)(i), (b)(5), (b)(7), and (b)(9); and adding new paragraphs (b)(11), (b)(12), (b)(13), (b)(14), and (b)(15) to read as follows:

§ 4140.1 Acts prohibited on public lands.

* * * * *

(a) * * *

(2) Failing to make substantial grazing use as authorized for 2 consecutive fee years, but not including approved temporary nonuse, conservation use, or use temporarily suspended by the authorized officer.

* * * * *

(b) * * *

(1) * * *

(i) Without a permit or lease, and an annual grazing authorization. For the purposes of this paragraph, grazing bills for which payment has not been received do not constitute grazing authorization.

* * * * *

(5) Molesting, harassing, injuring, poisoning, or causing death of livestock authorized to graze on these lands and removing authorized livestock without the owner's consent;

* * * * *

(7) Interfering with lawful uses or users including obstructing free transit through or over public lands by force, threat, intimidation, signs, barrier or locked gates;

* * * * *

(9) Violating State livestock laws or regulations relating to the branding of livestock; breed, grade, and number of bulls; health and sanitation requirements; and laws regarding the stray of livestock from permitted public land grazing areas that have been formally closed to open range grazing through the application of State, county or local laws;

* * * * *

(11) Violating any provision of part 4700 of this title concerning the protection and management of wild free-roaming horses and burros;

(12) Violating Federal or State laws or regulations pertaining to the:

(i) Placement of poisonous bait or hazardous devices designed for the destruction of wildlife;

(ii) Application or storage of pesticides, herbicides, or other hazardous materials;

(iii) Alteration or destruction of natural stream courses without authorization;

(iv) Pollution of water sources;

(v) Illegal take, destruction or harassment, or aiding and abetting in the illegal take, destruction or harassment of fish and wildlife resources; and

(vi) Illegal removal or destruction of archeological resources.

(13) Failing to pay any fee required by the authorized officer pursuant to this part, or making payment for grazing use of public lands with insufficiently funded checks;

(14) Failing to reclaim and repair any lands, property, or resources when required by the authorized officer;

(15) Failing to reclose any gate or other entry.

Subpart 4150—Unauthorized Grazing Use

55. Section 4150.1 is amended by designating the second sentence as paragraph (b) and adding a new paragraph (a) following the undesignated first sentence to read as follows:

§ 4150.1 Violations.

* * * * *

(a) The authorized officer shall determine whether a violation is nonwillful, willful, or repeated willful.

* * * * *

56. Section 4150.2 is amended by redesignating paragraphs (a) and (b) as (b) and (c), respectively, and adding a new paragraph (a) and (d) to read as follows:

§ 4150.2 Notice and order to remove.

(a) Whenever a violation has been determined to be nonwillful and incidental, and the owner of the unauthorized livestock, or agent, is known, the authorized officer shall notify the alleged violator that a violation has been reported, that the violation must be corrected, and how it can be settled, based upon the discretion of the authorized officer.

* * * * *

(d) The authorized officer may temporarily close areas to grazing by specified kinds or class of livestock for a period not to exceed 12 months when necessary to abate unauthorized grazing use. Such notices of closure may be issued as final decisions effective upon issuance or on the date specified in the decision and shall remain in effect pending the decision on appeal unless a stay is granted by the Office of Hearings and Appeals in accordance with 43 CFR 4.21.

57. Section 4150.3 is amended by removing the first sentence and revising the sentence following the new first sentence of the introductory text, revising paragraph (a), and removing the quotation mark, semicolon, and the word "and" at the end of paragraph (c) to read as follows:

§ 4150.3 Settlement.

* * * The amount due for settlement shall include the value of forage consumed as determined in accordance with paragraph (a), (b), or (c) of this section. * * *

(a) For nonwillful violations: The value of forage consumed as determined by the average monthly rate per AUM for pasturing livestock on privately owned land (excluding irrigated land) for the 17 western States as published annually by the Department of Agriculture. The authorized officer may approve nonmonetary settlement of unauthorized use only when the authorized officer determines that each of the following conditions is satisfied:

(1) Evidence shows that the unauthorized use occurred through no fault of the livestock operator;

(2) The forage use is insignificant;

(3) the public lands have not been damaged; and

(4) Nonmonetary settlement is in the best interest of the United States.

* * * * *

Subpart 4160—Administrative Remedies

58. Section 4160.1 is revised to read as follows:

§ 4160.1 Proposed decisions.

(a) Proposed decisions shall be served on any affected applicant, permittee or lessee, and any agent and lien holder of record, who is affected by the proposed actions, terms or conditions, or modifications relating to applications, permits and agreements (including range improvement permits) or leases, by certified mail or personal delivery. Copies of proposed decisions shall also be sent to the interested public.

(b) Proposed decisions shall state the reasons for the action and shall reference the pertinent terms, conditions and the provisions of applicable regulations. As appropriate, decisions shall state the alleged violations of specific terms and conditions and provisions of these regulations alleged to have been violated, and shall state the amount due under § 4130.7 and § 4150.3 and the action to be taken under § 4170.1.

(c) The authorized officer may elect not to issue a proposed decision prior to a final decision where the authorized officer has made a determination in accordance with § 4110.3–3(b) or § 4150.2(d).

59. Section 4160.3 is amended by removing from paragraph (b) the words "on other affected interests" and adding in their place the words "the interested public", revising paragraphs (a) and (c), and adding new paragraphs (d), (e), and (f) to read as follows:

§ 4160.3 Final decisions.

(a) In the absence of a protest, the proposed decision will become the final decision of the authorized officer without further notice unless otherwise provided in the proposed decision.

* * * * *

(c) A period of 30 days following receipt of the final decision, or 30 days after the date the proposed decision becomes final as provided in paragraph (a) of this section, is provided for filing an appeal and petition for stay of the decision pending final determination on appeal. A decision will not be effective during the 30-day appeal period, except as provided in paragraph (f) of this section. See § 4.21 of this title for general provisions of the appeal process.

(d) When the Office of Hearings and Appeals stays a final decision of the authorized officer regarding an application for grazing authorization, an applicant who was granted grazing use in the preceding year may continue at that level of authorized grazing use during the time the decision is stayed, except where grazing use in the preceding year was authorized on a temporary basis under § 4110.3–1(a). Where an applicant had no authorized grazing use during the previous year, or the application is for ephemeral grazing use, the authorized grazing use shall be consistent with the decision pending final determination on an appeal.

(e) When the Office of Hearings and Appeals stays a final decision of the authorized officer to change the authorized grazing use, the grazing use authorized to the permittee or lessee shall not exceed the permittee's or lessee's previously permitted use during the time that the decision is stayed.

(f) Notwithstanding the provisions of § 4.21(a) of this title, the authorized officer may provide that the final decision shall be effective upon issuance or on a date established in the decision and shall remain in effect pending the decision on appeal unless a stay is granted by the Office of Hearings and Appeals when the authorized officer has made a determination in accordance with § 4110.3–3(b) or § 4150.2(d). Nothing in this section shall affect the authority of the Director of the Office of Hearings and Appeals or the Interior Board of Land Appeals to place decisions in full force and effect as provided in § 4.21(a)(1) of this title.

60. Section 4160.4 is revised to read as follows:

§ 4160.4 Appeals.

(a) Any person whose interest is adversely affected by a final decision of the authorized officer may appeal the decision for the purpose of a hearing before an administrative law judge under § 4.470 of this title by filing a notice of appeal in the office of the authorized officer within 30 days after receipt of the final decision or within 30 days after the date the proposed decision becomes final as provided in § 4160.3(a). Appeals and petitions for a stay of the decision shall be filed at the office of the authorized officer. The authorized officer shall promptly transmit the appeal and petition for stay to ensure their timely arrival at the appropriate Office of Hearings and Appeals.

(b) A petition for a stay of the decision, if any, shall be filed with the authorized officer together with a notice of appeal. The authorized officer shall ensure prompt transmittal of appeals and petitions for stay and the accompanying administrative record to the Office of Hearings and Appeals.

Subpart 4170—Penalties

61. Section 4170.1–1 is amended by revising the first sentence of paragraph (d) to read as follows:

§ 4170.1–1 Penalty for violations.

* * * * *

(d) Any person found to have violated the provisions of § 4140.1(a)(6) after (Effective Date of Final Rule to be Inserted Here), shall be required to pay twice the value of forage consumed as determined by the average monthly rate per AUM for pasturing livestock on privately owned land (excluding irrigated land) for the 17 western States as supplied annually by the National Agricultural Statistics Service, and all reasonable expenses incurred by the United States in detecting, investigating, and resolving violations.* * *

62. Section 4170.1–2 is revised as follows:

§ 4170.1–2 Failure to use.

After consultation with the permittee or lessee and any lienholder of record, the authorized officer may cancel permitted use to the extent of failure to use when a permittee or lessee has failed to make substantial use as authorized, or fails to maintain or use water base property in the grazing operation for 2 consecutive grazing fee years.

63. Section 4170.1–3 is amended by revising the section heading, the introductory text of the section, and paragraph (c) to read as follows:

§ 4170.1–3 Federal or State animal control and environmental protection or resources conservation regulations or laws.

Violation of the Bald Eagle Protection Act, Endangered Species Act, Wild and Free-Roaming Horse and Burro Act, or other Federal and State pest or animal

damage control, natural and cultural resource protection, conservation or environmental laws or regulations, referenced under § 4140.1 may result in penalty under § 4170.1–1 where:

* * * * *

(c) The permittee or lessee has been convicted or otherwise found to be in violation of any of these laws or regulations by a court or by final determination of any agency charged with the administration of animal control, conservation or environmental laws or regulations where no further appeals are outstanding.

64. Section 4170.2–1 is revised to read as follow:

§ 4170.2–1 Penal provisions under the Taylor Grazing Act.

Under section 2 of the Act any person who willfully commits an act prohibited under § 4140.1(b), or who willfully violates approved special rules and regulations is punishable by a fine of not more than $500.

65. Section 4170.2–2 is revised to read as follows:

§ 4170.2–2 Penal provisions under the Federal Land Policy and Management Act.

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), any person who knowingly and willfully commits an act prohibited under § 4140.1(b) or who knowingly and willfully violates approved special rules and regulations may be brought before a designated U.S. magistrate and is punishable by a fine in accordance with the applicable provisions of Title 18 of the United States Code, or imprisonment for no more than 12 months, or both.

66. A new subpart 4180 is added to read as follows:

Subpart 4180—National Requirements and Standards and Guidelines for Grazing Administration

§ 4180.1 National requirements for Grazing Administration.
§ 4180.2 Standards and guidelines for Grazing Administration.

Subpart 4180—National Requirements and Standards and Guidelines for Grazing Administration

§ 4180.1 National Requirements for Grazing Administration.

(a) Permits and leases, and grazing-related plans and activities on public lands shall incorporate, as applicable, the following:

(1) Grazing practices that maintain or achieve healthy, properly functioning ecosystems;

(2) Grazing practices that maintain or achieve properly functioning riparian systems;

(3) Grazing practices that maintain, restore or enhance water quality and ensure to the extent practicable the attainment of water quality that meets or exceeds State standards; and

(4) Grazing management practices that ensure to the extent practicable in the maintenance, restoration and enhancement of the habitat of threatened or endangered, and Category 1 or 2 candidate species.

(b) The authorized officer shall take appropriate action pursuant to subparts 4110, 4120, 4130, and 4160 of this part as soon as practicable but not later than the start of the next grazing year where existing management practices fail to meet the requirements of this section.

§ 4180.2 Standards and guidelines for Grazing Administration

(a) Each Bureau of Land Management State Director shall determine the appropriate geographical area for which such standards and guidelines shall be developed and implemented. Standards and guidelines shall be developed for an entire State, or for an ecoregion encompassing portions of more than one State, except where the State Director determines that the combination of the geophysical and vegetal character of an area is unique and the health of the rangelands within the area will not be adequately protected using standards and guidelines developed on a broader geographical scale. The State Director shall consult with the multiple resource advisory councils, where they exist, in making these determinations.

(b) The Bureau of Land Management State Director shall provide the opportunity to the public for involvement in the development of State or regional standards and guidelines.

(c) The Bureau of Land Management State Director shall develop and amend State or regional standards and guidelines in consultation with the relevant Bureau of Land Management multiple resource advisory councils, Indian tribes, and other Federal land management agencies responsible for the management of lands and resources within the region or area under consideration, and the interested public.

(d) At a minimum, State or regional standards for rangeland health developed pursuant to paragraphs (a), (b), and (c) of this section, shall address indicators of the following:

(1) Soil stability and watershed function;

(2) The distribution of nutrients and energy;

(3) Recovery mechanisms; and

(4) Riparian functioning condition.

(e) At a minimum, State or regional guidelines for grazing administration developed pursuant paragraphs (a), (b), and (c) of this section, shall address the following:

(1) Grazing management practices to be implemented to assist the recovery of threatened or endangered species, and prevent species listed as Category 1 or 2 from becoming threatened or endangered.

(2) Grazing management practices to be implemented to maintain, restore or enhance water quality, and assist in attaining water quality which is necessary to meet or exceed State standards.

(3) Periods of critical plant growth and regrowth and the need for, and the general timing and duration of, periods of rest from livestock grazing.

(4) Situations in which continuous season-long grazing would be consistent with achieving healthy, properly functioning ecosystems and riparian systems.

(5) Selection criteria and general design standards for the development of springs, seeps, and other projects affecting water and associated resources, that will protect the ecological values of those sites.

(6) Situations in which grazing will be authorized on designated ephemeral (annual and perennial) rangelands, including the establishment of criteria for minimum levels of production, minimum residual growth to remain at the end of the grazing season, and the protection of perennial vegetation.

(7) Criteria for the protection of riparian-wetland areas, including the location, or need for relocation or removal, of livestock management facilities (corrals or holding facilities, wells, pipelines, fences) outside riparian-wetland areas, or the modification of livestock management practices (e.g., salting and supplement feeding).

(8) Grazing management practices or utilization or residual vegetation limits in riparian and wetland areas that will:

(i) Maintain, improve, or restore both herbaceous and woody species (where present or potential exists) to a healthy and vigorous condition and facilitate reproduction and maintenance of diverse age classes in the desired plant communities; and

(ii) Leave sufficient vegetation biomass and plant residue (including woody debris) to provide for adequate sediment filtering, dissipation of stream energy, streambank stability and stream shading.

(f) In the event standards are not developed pursuant to this section prior to (The Date 18 Months After the Effective Date of the Final Rule), the standards provided in this paragraph shall apply until such time as standards are developed pursuant to paragraph (d) of this section:

(1) The soil A-horizon is present and unfragmented, and the soil is developed or accumulating on site. Rills and gullies are absent, or if present, they have blunted and muted features. There is no visible scouring, sheet erosion, and/or soil sediment deposition.

(2) Plants are well distributed across the site, and photosynthetic activity occurs throughout the growing season. A uniform distribution of litter is evident. The plant community structure results in rooting throughout the available soil profile.

(3) Plants display normal growth forms and vigor. The plant communities display a diverse range of age classes.

(4) Flood plains are present and well developed and channel sinuosity, width-to-depth ratio, and gradient are in balance with the landscape setting.

The authorized officer shall take appropriate action under subparts 4110, 4120, 4130, and 4160 of this part, where a preponderance of evidence, collected through field observations, monitoring, site inventory, or other acceptable study methods, indicates that the standards are not being met.

(g) In the event guidelines are not developed and approved by the Secretary pursuant to this section prior to (The Date 18 Months After the Effective Date of the Final Rule), and until such time as guidelines are developed pursuant to paragraph (e) of this section and approved by the Secretary, the authorized officer shall take appropriate action under subparts 4110, 4120, 4130, and 4160 of this part to ensure that all grazing-related activities conform with the following:

(1) Grazing management practices will ensure to the extent practicable in the recovery of threatened or endangered species, and prevent candidate species, Category 1 or 2, from becoming threatened or endangered. Emphasis will be toward maintaining or improving plant and animal habitat to avoid future listing.

(2) Grazing practices will maintain, restore or enhance water quality and ensure to the extent practicable the attainment of water quality which meets or exceeds State standards.

(3) Grazing schedules will include periods of rest during times of critical plant growth or regrowth. The timing and duration of rest periods will be determined by the local authorized officer administering the grazing authorization.

(4) Continuous season-long grazing will be authorized only when it has been demonstrated to be consistent with achieving healthy, properly functioning ecosystems and riparian systems, and with meeting identified resource objectives.

(5) Development of springs and seeps or other projects affecting water and associated resources will be designed to protect the ecological values of those sites.

(6) Grazing will be authorized on designated ephemeral (annual and perennial) rangeland only if reliable estimates of production have been made, an identified level of annual growth or residue to remain on site at the end of the grazing season has been established, and adverse effects on perennial species will be avoided.

(7) Livestock management facilities (corrals or holding facilities, wells, pipelines, fences) or livestock management practices (salting and supplement feeding) will be located outside riparian-wetland areas wherever possible. Appropriate action, which may include the relocation or removal of the facilities or modification of the practices, will be taken where standards are not being met.

(8) Grazing management practices and utilization or residual vegetation limits will be established and applied in riparian and wetland areas that will:

(i) Maintain, improve, or restore a diversity of both herbaceous and woody species (where such species are present or would be present under normal conditions) to a healthy and vigorous condition and facilitate reproduction and maintenance of diverse age classes in the desired plant communities, and

(ii) Leave sufficient vegetation biomass and plant residue (including woody debris) to provide for adequate sediment filtering, dissipation of stream energy, streambank stability and stream shading.

(9) Allotment management plans and other activity plans addressing livestock grazing that are developed or amended after (The Date 18 Months After the Effective Date of the Final Rule will be Inserted here), will specify desired plant communities that will include minimum percentages of site vegetation cover, and will establish utilization limits for riparian and upland sites that will contribute to maintaining or achieving proper functioning condition.

(h) Standards provided in paragraph (f) of this section and guidelines provided in paragraph (g) of this section may be modified by the Bureau of Land Management State Director, with approval of the Secretary, to address local ecosystems and management practices.

(i) No State or regional standards or guidelines developed by the Bureau of Land Management State Director pursuant to this section shall be implemented prior to their approval by the Secretary.

(j) Standards and guidelines for grazing administration shall be adhered to in the development of grazing-related portions of activity plans, and shall be reflected in the terms and conditions of permits and leases and grazing authorizations. The authorized officer shall take appropriate action pursuant to subparts 4110, 4120, 4130, and 4160 of this part as soon as practicable but not later than the start of the next grazing year where existing grazing management practices fail to meet the standards and guidelines.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 94–7060 Filed 3–22–94; 4:46 pm]

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federal register

Friday
March 25, 1994

Part VII

Department of Agriculture

Forest Service

Department of the Interior

Bureau of Land Management

Interim Strategies for Managing Anadromous Fish-Producing Watersheds on Federal Lands in Eastern Oregon, et al.; Notice

DEPARTMENT OF AGRICULTURE

Forest Service

[4310–84]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Interim Strategies for Managing Anadromous Fish-Producing Watersheds on Federal Lands in Eastern Oregon, et al.

AGENCY: Forest Service, USDA; Bureau of Land Management, Interior.

ACTION: Notice of availability of environmental assessment and proposed finding of no significant impact.

SUMMARY: The Forest Service and Bureau of Land Management (BLM) announce the availability of an environmental assessment (EA) and proposed finding of no significant impact (FONSI) on a proposal to establish interim management direction for anadromous fish habitat protection and restoration on all or part of 15 National Forests in four Forest Service regions in four States, and seven BLM districts in four States. For the Forest Service, this includes all or parts of the following National Forests: Lassen and Los Padres in California (Region 5); Bitterroot, Clearwater, and Nez Perce (Region 1) and Boise, Challis, Payette, Salmon, and Sawtooth (Region 4) in Idaho; Malheur, Ochoco, Umatilla, and Wallowa-Whitman in Oregon (Region 6); Okanogan in Washington (Region 6). For the BLM, this includes all or parts of: Bakersfield and Ukiah Districts in California; Coeur d'Alene and Salmon Districts in Idaho; Prineville and Vale Districts in Oregon; and Spokane District in Washington. Public comments on the EA and proposed FONSI are invited.

DATES: Comments must be received in writing, postmarked by May 9, 1994. Send written comments to "PACFISH EA," Forest Service, U.S. Department of Agriculture, P.O. Box 96090, Washington, DC 20090–6090.

ADDRESSES: The public may obtain copies of the EA and proposed FONSI from Forest Service regional offices and national forests or the BLM State offices in the project area, and the Washington, DC offices of the Forest Service and the BLM. To request a copy by phone call (202) 205–0957.

FOR FURTHER INFORMATION CONTACT: Cindy Deacon Williams (Forest Service) at (202) 205–1208, or Rick Swanson (Bureau of Land Management) at (202) 452–7770.

SUPPLEMENTARY INFORMATION: The Forest Service and Bureau of Land Management (BLM) are developing an ecosystem-based management strategy for Pacific anadromous fish (i.e., salmon, steelhead, and sea-run cutthroat trout) habitat on lands they administer in eastern Oregon and Washington, and portions of Idaho and California. This anadromous fish habitat and watershed conservation strategy (commonly referred to as "PACFISH") is being developed to respond to large declines in anadromous fish populations and widespread degradation of habitat condition.

The Agencies are considering adopting interim management direction to halt degradation and to ensure that actions taken during the 18 month period needed to complete geographically-specific environmental impact statements (EISs) do not have adverse environmental effects that could limit options for protection and management of anadromous fish habitat. The EA is intended to guide the Agencies to decide: (1) Whether to continue current management practices or to institute interim direction while longer-term management options are evaluated in the EISs; (2) what management direction should be applied during the interim period; (3) which watersheds interim direction would apply to; and (4) which categories of projects and activities might be affected.

The EA describes five interim management alternatives and evaluates their effects on the physical, biological, and human environment. The preferred alternative is intended to provide a consistent approach for halting the degradation of aquatic and riparian ecosystems, and maintaining and beginning restoration of aquatic and riparian habitat conditions while the EISs are being completed. The preferred alternative would apply to proposed activities and to ongoing projects that are determined on a case-by-case basis to pose an unacceptable risk to riparian and aquatic ecosystems or at risk stocks. The interim management direction does not authorize, fund, or carry-out any project decisions, nor does it compel any changes in the physical environment. This interim direction includes management measures and standards and guidelines to be incorporated into separate project decisions while the Agencies evaluate a longer term strategy for anadromous fish protection. The analysis shows that the environmental effects of the interim management direction will be minimal for all alternatives considered, but adoption of some alternatives would begin important changes in management of habitat crucial to the survival of the remaining anadromous fish populations.

For the Forest Service, the interim management direction is expected to result in non-significant amendments to the forest plans of the affected forests. The BLM would issue an instructional memorandum to affected districts. Prior to a decision on the interim management direction, the Agencies will complete Endangered Species Act (ESA) consultation with the National Marine Fisheries Service and U.S. Fish and Wildlife Service. Project decisions will be preceded by the appropriate level of environmental analysis in compliance with the National Environmental Policy Act and other Federal environmental laws. Modifications of some ongoing projects or activities may be necessary depending upon the final decision reached regarding the interim management direction.

To assist the Agencies in considering comments on the proposed action and the alternatives, comments should be as specific as possible. It also is helpful if comments refer to specific pages in the document. It is important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Agencies at a time when they can meaningfully consider and respond to them. The officials responsible for making the final decision on the interim management direction will be the Secretaries or their designees.

Dated: March 17, 1994.

For the Forest Service.

Jack Ward Thomas,

Chief.

Dated: March 18, 1994.

For the Bureau of Land Management.

Mike Dombeck,

Acting Director.

[FR Doc. 94–7042 Filed 3–24–94; 8:45 am]

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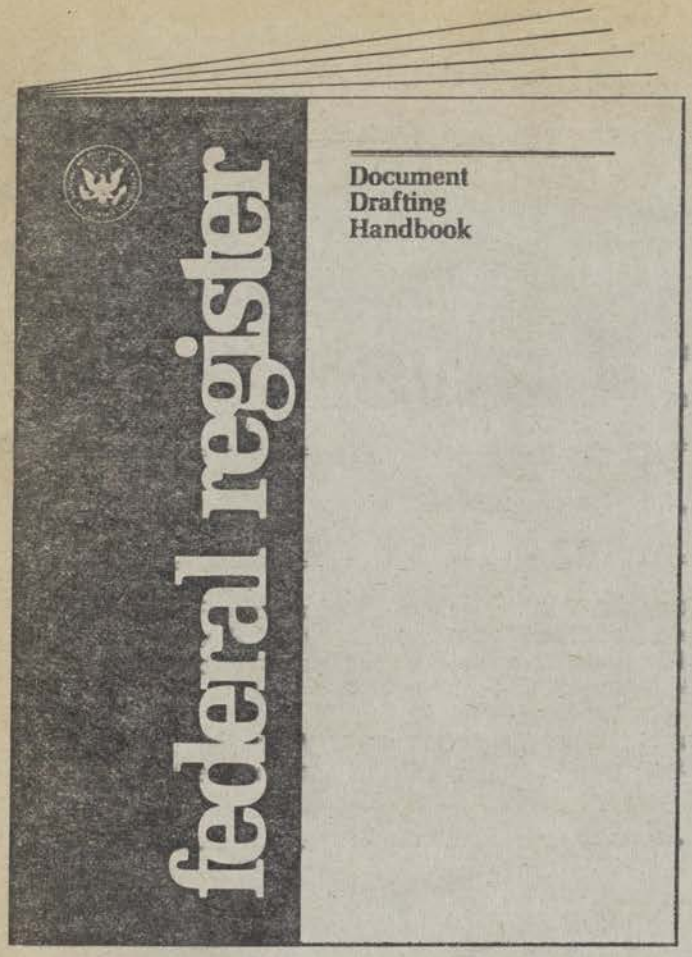

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